

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1075 OF 2022

Sagar Rajendra Kathoute

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Rahul Kate alongwith Mr.Suraj Naik i/by Mr.Raju Digamber
Suryawanshi, Advocates for the Applicant.
Mr.A.A.Palkar, APP for the Respondent.

**CORAM : VINAY JOSHI, J.
DATE : 20th APRIL, 2022.**

P.C.:-

1. In anticipation of arrest, the applicant is seeking pre-arrest protection in Crime No.81 of 2021 registered at Rajapur Police Station, transferred to Kankavali Police station vide C.R.No.72 of 2022 for the offence punishable under Sections 376, 376 (2)(n), 417 of Indian Penal Code.

2. At the instance of report lodged by informant-lady aged about 26 years, the crime was registered. The informant got married with somebody in the year 2016 and after matrimonial breakdown she filed petition for divorce, which is pending. It is her case that somewhere in the year 2018 she got acquainted with applicant through facebook. Their casual acquiescence has turned into love relationship. On 7th February, 2021 the applicant called victim to Kankavali to meet him. Accordingly, victim lady went from Nagpur to Kankavali where they had physical relations. Thereafter both of them stayed in the State of Goa for 3 days and then again stayed for two months at Kankavali. Then both of them went to village Vatul,

applicant's place of working where again stayed for one month. The informant stated that all the time applicant maintained sexual relations by assuring her for marriage. However, later on he has refused to marry. The informant learnt that applicant is about to marry with someone else and as he did not perform the promise, report has been lodged.

3. The state resisted bail by advancing submission and producing investigation papers. The statement recorded during course of investigation would only suggest that both of them lived together for long period. It is not the case that the sexual relations were under force or compulsion. Since inception a grown-up lady who was waiting for her divorce decree had maintained relationship with applicant. The entire episode discloses that for months together the victim lady was staying with the applicant. It is worthwhile to note that Supreme court in reported case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr.**¹ observed that there is marked distinction between false promise and breach of promise. Therefore, it is necessary to establish that consent was obtained by deceitful manner.

4. Having regard to the entire episode it reveals that it is a case of consensual relationship. It is a matter of trial to establish that whether since inception the applicant with deceitful intention has obtained consent for sexual favours. Considering the nature of accusation nothing is to be seized at the instance of applicant. Medical examination of applicant can be done by putting such condition. The investigation is practically complete. In view of above, the applicant's liberty can be protected by directing him to join the course of investigation, hence order.

(a) The application stands allowed.

¹ (2019)9 Supreme Court Cases 608

- (b) In the event of arrest of applicant in connection with Crime No.81 of 2021 registered at Rajapur Police Station, District Ratnagiri (transferred to Kankavali Police station vide C.R.No.72 of 2022), he be released on bail on his furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall attend concerned police station on every Sunday in between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet.
- (d) The applicant shall make himself available for medical examination as and when called by the Investigating Officer.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (f) The application stands disposed in above terms.

(VINAY JOSHI, J.)

....