

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

ANTICIPATORY BAIL APPLICATION NO.88 OF 2022

Gaurav Ganesh Sawant Applicant
Versus
The State of Maharashtra Respondent

Mr. M.K. Kocharekar, Advocate for the Applicant.
Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th JANUARY, 2022
[Through Video Conferencing]

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.576/2021 registered at Dongri Police Station, Mumbai on 28.10.2021 under Section 376 of the Indian Penal Code.

2. Heard Shri M.K. Kocharekar, learned counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The FIR is lodged by the prosecutrix herself. She was 27 years of age at the time of lodging of the FIR. She has

stated that she got acquainted with the applicant through a social networking site. The applicant was working as a Constable with the Police Department. He was posted at Byculla. They developed friendship. It is her allegation that in July, 2018, under some pretext, the applicant took her to his house. It is her case that he made her drink some intoxicating drink and then had physical relations. He shot a video. It is mentioned in the FIR that thereafter he apologized and told her that he wanted to marry her and that he loved her. Thereafter they had physical relations on many occasions. They were to get married. The marriage was fixed. The engagement took place on 10.12.2020. The marriage was to take place on 10.12.2021. It is her case that however the applicant refused to marry her as decided earlier. Therefore, she lodged this FIR.

4. Learned counsel for the applicant submitted that there was no misconception of facts and there was no false inducement. The applicant always wanted to marry the informant. Both the families were aware of the same. The

marriage was fixed. Marriage Hall was also booked. Therefore, Section 376 of IPC is not made out.

5. Learned counsel for the applicant relied on the WhatsApp chat messages sent by the informant wherein she herself had expressed her unwillingness to marry the applicant. He also drew my attention to an NC complaint lodged by the applicant on 22.9.2021, wherein he has stated that the informant herself had refused to marry him and was threatening him to involve him in a criminal complaint. Shri Kocharekar, therefore, submitted that in this background the applicant's custodial interrogation would not be justified.

6. Learned APP opposed this application. She submitted that in the past also the applicant had cheated another girl and, therefore, leniency should not be shown to him. She submitted that only because of the past relations with that girl the present informant had shown unwillingness to marry him.

7. I have considered these submissions. As far as the question of misconception of facts and false inducement is

concerned, the record shows that both the informant and the applicant had decided to get married. The marriage was fixed. The hall was booked. Therefore, it cannot be said that the applicant had dishonest intentions to cheat the informant and thereby induced her into maintaining physical relations. Subsequently, for some reason, the marriage could not take place. The WhatsApp chat messages show that the informant herself had refused to marry the applicant. Subsequently again she showed willingness to marry him.

8. Therefore, the stand taken by both the sides is wavering. Therefore, it has become doubtful to hold that the offence under Section 376 of IPC is made out. Today, I am only considering whether at this stage in the background of the aforesaid facts, the applicant is entitled for protection of anticipatory bail. All these aspects will have to be decided after the investigation is over and after the trial is conducted. The trial court shall not be influenced by any of the observations made in this order. However, at this stage, the applicant has sufficiently made out a case for grant of

anticipatory bail in the backdrop of these facts.

9. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.576/2021 registered with Dongri Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned police station as and when called and shall co-operate with the investigation.
- (iii) The applicant shall not cause harassment to the informant in any manner.
- (iv) Anticipatory Bail Application stands disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2022.01.14
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+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)