

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

ANTICIPATORY BAIL APPLICATION NO. 163 OF 2021

Mr. Azhar Amanualla Khan

.... Applicant

versus

The State of Maharashtra

... Respondent

.....

Dr. Samarth S. Karmarkar i/b. Karmarkar and Associates
for Applicant

Mr. Ajay Patil, APP for the State/Respondent

CORAM : SARANG V. KOTWAL, J.
DATE : 10th JANUARY, 2022
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No. 863 of 2020 registered with Waliv Police Station on 20/10/2020 under section 376, 420, 323 and 506 of the Indian Penal Code.
2. Heard Dr. Karmarkar, learned counsel for the Applicant and the learned APP for the State.
3. The record shows that on 11th February, 2021, an advocate had appeared and had sought some time

for filing of an intervention application. However, till today, no such intervention application is filed. Therefore, I am proceeding to decide this application since it is pending for more than a year.

4. The FIR is lodged by the prosecutrix herself on 20th October, 2020. She has stated that she was working in a call centre at Malad, where she acquainted with the present Applicant. Their friendship developed into a love affair. The Applicant expressed his desire to marry her. The Applicant had left the job of that company. On 12th May, 2019, the Applicant came to the Informant's house and met her family members. Similarly, on 5th June, 2019, the First Informant accompanied the Applicant to his house, where she met his family members. The Applicant informed the family members about his decision to marry her. This was accepted by both the families. It is alleged that in September, 2019, the Applicant took her to a hotel and had physical relations. Those continued between

September, 2019 to July, 2020. In the meanwhile the First Informant gave Rs.1,45,000/- by way of financial assistance. Subsequently, the Applicant refused to marry her and did not return her amount.

5. The learned counsel for the Applicant submits that bare reading of the FIR, reveals that there was consensual relationship between the Applicant and the First Informant and that there was no intention to cheat the First Informant. Therefore, no offence is made out under section 376 of the Indian Penal Code.
6. The learned APP relied on the averments made in the FIR.
7. The FIR discloses that both the families were aware of their relationship and in fact, both the families had approved of their relationship . Therefore, it cannot be said that the Applicant had acted with dishonest intention right from the inception. After the marriage was fixed, they developed the physical relationship.
8. In these circumstances, in my view, the

custodial interrogation is not necessary. It is made clear that investigation can go on. The trial Court, at the appropriate stage decide the trial on its own merits without being influenced by the observations made in this order.

9. Hence, the following order:

ORDER

- (i) Application is allowed.
- (ii) In the event of his arrest in connection with C.R. No. 863 of 2020 registered with Waliv Police Station , the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) The Applicant shall attend the concerned police station as and when called and shall cooperate with the Investigation Agency.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)