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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.238 OF 2022

Pravin Javaharmal Chandan .. Applicant

Versus

State of Maharashtra .. Respondent

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Ms.Pranali Kakade i/b Ms.Anita Bafna for the Applicant.

Mr.P.H.Gaikwad, A.P.P. for the State/Respondent.

Mr.Abhijeet Shukla for the Intervenor.

API Shri Sharad Surve attached to Oshiwara Police Station,
present.

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CORAM: BHARATI DANGRE, J.

DATED : 02nd MARCH, 2022

P.C:-

1. Heard the learned counsel for the application, the learned APP for the State and the learned counsel for the informant/intervenor.

2. The applicant was admitted to interim protection by order dated 31/01/2022 by specifically recording that the FIR speaks about the incidents of the year 2010 onwards till 2019 and the FIR is lodged on 25/12/2021. It is also recorded that the period mentioned in the FIR is quite long and apparently,

before the report, the informant never complained against the applicant and, therefore, the interim relief came to be granted.

3. The applicant was directed to attend the concerned police station on the given dates and it is not in dispute that he has accordingly attended the police station and he was also subjected to the investigation.

4. On the merits of the matter, the FIR lodged by the informant is perused, which invokes Sections 376(2)(N), 313, 323, 504, 506, 506(2) of the IPC. It can be seen that the informant was introduced with the applicant in the year 2010. According to the version of the informant, on 24/10/2010 for the first time, the applicant established physical relationship with her, when she accompanied him to celebrate her birthday in a hotel in Malaysia. The relationship continued thereafter and from the said date upto 2019, they are in relationship in the nature of marriage and that is why, she filed an application before the Magistrate by instituting a complaint under Section 12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short, **“the DV Act”**).

In the said complaint, which is placed on record at page 32, she has narrated the long existing relationship between the two and taking recourse to the provisions of the DV Act, she sought protection flowing therefrom. Several reliefs are claimed in the said application, which include claim of compensation of Rs.20,00,00,000/- and a right of residence as

well as an amount of Rs.6,00,000/- per month to be paid to her towards maintenance, alongwith amount of Rs.5,00,000/- towards litigation expenses. An application for interim maintenance is also filed by the informant in the said proceedings.

5. In the wake of the relationship, which is not specifically denied by the informant, *prima facie*, an offence under Section 376, which contemplate sex against will and without consent as per Section 375 of IPC, cannot be made out in the allegations levelled in the complaint. Now, an attempt is made on behalf of the informant to argue that the applicant had projected a false picture of his family life before her and, therefore, she offered her consent for sex, in absence of these facts being made known to her. This contention, apparently, is without any foundation, since after meeting the applicant on 24/10/2010 when they had gone to Malaysia for celebrating her birthday, the first act of sexual indulgence is committed. From the year 2010 till the year 2021, not a single complaint is lodged by her alleging that the sex by the applicant was forcible and without her consent. Thereafter, there are instances in the complaint, when the act was repeated, but no complaint is ever lodged by her.

Since the relationship between the applicant and the informant, *prima facie*, appear to be consensual in nature and the informant being a major in age and educated and holding a good ranking post and residing in Mumbai, it cannot be said that she has was so gullible, that she could not have refused the request of the applicant.

In any case, the applicant will face the consequences of his act, at the stage of trial.

However, at present, his custodial interrogation is not warranted and, therefore, the order passed by this Court 31/01/2022 deserve a confirmation.

6. The direction to the applicant to attend the police station, however, stands modified to the effect that he shall report to the police station on 14th and 15th March, 2022 between 10.00 a.m. to 2.00 p.m. and, thereafter, as and when called by the Investigating Officer, till filing of the charge-sheet.

(SMT. BHARATI DANGRE, J.)