

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

ANTICIPATORY BAIL APPLICATION NO.337 OF 2022

Rohit Shankardeen Dahiya Applicant

versus

State of Maharashtra Respondent

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- Mr.Saurabh Butala a/w Harshad Sathe, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th FEBRUARY, 2022
(through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.12/22, dated 14/01/2022, registered with Koperkhairne Police Station, Navi Mumbai, under sections 376, 377, 417, 506 of the Indian Penal Code.

2. Heard Mr.Saurabh Butala, learned counsel for the Applicant and Smt. A. A. Takalkar, learned APP for the State.

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3. The FIR is lodged by the prosecutrix herself. She was 28 years of age. She was a widow and had 8 years old son. In September 2021 the Applicant approached her. They exchanged their social networking ID. They kept in touch and slowly their friendship grew. Their friendship grew into love affair. The Applicant was clearly told that the informant was a widow and had 8 years old son. Initially, the informant had told him that they should remain friends and should not take their relationship any further. However, the Applicant persisted. The informant had clearly told the Applicant that she had lost her husband and after that one boy had cheated her on matrimonial website and that she would not be able to face any other such incident. She also told the Applicant that her parents wanted her to get married. It is mentioned in the FIR that the Applicant told her that he would marry her. The informant specifically asked him whether his family would accept herself and her son. The informant assured her that the decision of marriage was left by his family to himself and even if his family did not accept her, he would look after her son. The informant believed him. After a

few days, the Applicant started pressing for physical relations. The informant used to avoid that subject. She clearly told that she was not comfortable in having physical relations before marriage. But the Applicant assured her that since they would definitely get married, there was no reason as to why they should not have physical relations. Based on this promise, the informant consented for physical relations. The FIR mentions the instances when they had their physical relations. There are allegations of unnatural sex also.

4. It is mentioned in the FIR that the Applicant had shot video clips of their physical relations. He had taken Rs.42,000/- from the informant. The informant was told by her friend that the Applicant was trying to get friendly with the informant's friend. The informant questioned him. He started avoiding the informant. He was persistently asked by the informant about the marriage. But he used to avoid that subject and told her that they should remain as friends. There was quarrel between them and the Applicant told her that he would not marry her. The

informant was shocked. She told him that she would commit suicide. But it did not make any difference to the Applicant. He threatened her and on this basis, the FIR is lodged.

5. Learned counsel for the Applicant submitted that from bare reading of the FIR it appears that it was a purely consensual relationship. There is nothing to indicate that the informant was not knowing about her acts. She was a consenting party. She was 6 years older than the Applicant. She was definitely knowing what she was doing. The Applicant is a young boy and his future will be affected. He submitted that there are 'Whatsapp' chat, which show that the informant was aware that the Applicant would not marry her. Learned counsel for the Applicant submitted that the Applicant had lodged his own NC on 31/01/2022. There he has complained that the informant was threatening to lodge complaint against the Applicant and that she was threatening to commit suicide.

6. Learned APP opposed this application. She submitted

that there are register entries where the Applicant and the informant had visited various lodges as mentioned in the FIR. The 'Whatsapp' messages were produced before me. There were some intimate photographs which were produced by the informant from her mobile. Learned APP submitted that the physical relations were purely based on the false promise given by the Applicant. Therefore offence as alleged is committed. There are definite deliberate misleading and inducement on the part of the Applicant and therefore it amounts to misrepresentation of the facts and the offence being serious, anticipatory bail should not be granted to him.

7. I have considered these submissions. As far as the NC lodged by the Applicant, is concerned, the informant's FIR makes a reference to such conversation between the Applicant and the informant. Thus, the informant has not concealed anything while lodging the FIR. The informant had given one opportunity to the Applicant before approaching the police. Therefore it cannot be said that the FIR is lodged by the

informant as counterblast to the NC lodged by the Applicant against the informant.

8. The 'Whatsapp' chat indicate that the informant had told the Applicant that she was not comfortable in having physical relations before marriage. In those messages, she has clearly expressed that they would have their relations only after the marriage. Thus there is considerable force in the submissions of learned APP that the informant consented to physical relations only after the Applicant had promised marriage. The informant was misled by this false representation.

9. The Investigating Officer has also pointed out an exchange of message wherein the Applicant had proposed marriage to the informant and the informant had accepted it. Thus the promise to marriage was definitely made and the developments show that it was a false promise and the intention of the Applicant was never honest.

10. The Applicant has not taken any steps for marriage by telling the informant's family or his own family. Thus at this stage, the informant's case that the Applicant had never intended to marry the informant, does not appear to be a false story. Some intimate photographs are recovered from the informant's mobile phone. Therefore it is also clear that there are some video clips which can be seized. Apart from that the Applicant had taken Rs.42,000/- from the informant. The offence is serious and therefore anticipatory bail cannot be granted to the Applicant. The application is rejected.

(SARANG V. KOTWAL, J.)