

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

ANTICIPATORY BAIL APPLICATION NO.521 OF 2022

Vishal Parshuram Gaikwad

..Applicant

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Harshad Nimbalkar a/w Satyam H. Nimbalkar, Shivam Nimbalkar & Abhishak Arote, for the Applicant.

Mr. N. B. Patil, APP for the Respondent/State.

Mr. Akhilesh Jaiswal i/by Hrishikesh Ghorpade, for the Intervenor.

Mr. R. V. Temgire, PSI, Chaturshrungi Police Station, Pune City – present.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st SEPTEMBER, 2022

PC.

1. Heard respective counsels.
2. Case of the prosecution is, complainant alleged that applicant pretended to be a divorced person established physical relationship, assaulted her and also threatened with defamation by circulating her nude photographs. As a sequel of above, offence being Crime No.40 of 2022 came to be registered with Chaturshrungi Police Station for the offence punishable under Sections, 376, 376(2)(n), 354A(1)(iv), 354-D, 324, 323, 500, 506, 507 r/w 34 of IPC.
3. Counsel for the applicant Mr. Harshad Nimbalkar would

urge that events in the FIR and other material placed on record speaks of consensual relationship with applicant who is 47 years of age, married and having grown up children. According to him, complainant is in laundry business and was well aware about social status (married) of the applicant, still she has established and continued physical relationship with the applicant. According to him, such relationship was known to the wife of the applicant. So as to substantiate said claim, he has relied on certain whatsapp communication, group photographs of complainant with the family of applicant. He would urge that relationship is since last more than four years which can be inferred from the narrations made in the complaint. As such, his case is that of consensual relation and false implication. He would further urge that he is very much available for investigation and that being so, he deserves to be released in the event of his arrest.

4. Learned APP assisted by counsel for the complainant would urge that even if the consensual physical relationship is accepted, the fact remains that complainant got married on 8th December, 2021, thereby severing relationship if any with the applicant. According to him, the applicant thereafter continuously threatened the complainant and tried to shut down her business established physical relationship between May, 2018 to 30th January, 2022 and circulated false information about the complainant. Counsel for the complainant would further urge that the conduct of the applicant along with his wife categorically speaks of *prima-facie*

involvement of the applicant which warrants custodial interrogation.

5. In response to the Court's query, counsel for the applicant Mr. Harshad Nimbalkar submits that charge-sheet in the matter is already filed against the applicant and his wife. He would urge that mobile of the applicant and his wife is seized and CDR report is sought for. Apart from above, he would urge that necessary papers from the hotel which are mentioned in the FIR are already collected. As such, according to him, investigation in the matter is already over.

6. In the background, if we appreciate rival claims, what can be noticed is, complainant herself has admitted about her physical relationship with the applicant from July 2018 till her date of marriage i.e. 8th December, 2021.

7. It appears that subsequent thereto even there appears to be exchange of whatsapp messages which speaks of *inter-se* communication between the complainant and the applicant. The entire allegations in the FIR and the investigation papers primarily depict that there was consensual relationship between the parties, that being so, offence under Section 376 of IPC cannot be said to be made out against the applicant.

8. As regards offence under Sections 324 and 354 of IPC is concerned, once it is established that the offence under Section 376

of IPC is not made out, in absence of substantive evidence on record against the applicant to infer that the applicant is involved in such offence, it cannot be said that the applicant's custodial interrogation is required particularly when the applicant and his wife are already charge-sheeted. In this background, it is required to be further observed that applicant pursuant to ad-interim protection ordered on 28th February, 2022 has already appeared before the Investigating Officer and has co-operated.

9. As such, ad-interim protection ordered by this Court on 28th February, 2022 stands confirmed.

10. In the event of arrest, applicant is directed to be released on bail on furnishing PR bond of Rs.25,000- with one or more sureties in the like amount.

11. As charge-sheet in the matter is already filed, Applicant shall attend the Investigating Officer if further investigation is called for.

12. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence, so also shall not establish contact with the victim.

13. The application as such stands allowed in above terms.

[NITIN W. SAMBRE, J.]