

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.974 OF 2022**

Tushar Harihar ... Applicant
versus
State of Maharashtra & Anr. ... Respondents

Mr. Mahadji Phalke, for Applicant.
Mrs. J.S.Lohakare, APP, for State.
Mr. Shubham More, for Intervenor.

CORAM: N.J.JAMADAR, J.

DATE : 28th JUNE, 2022

P.C.

1. Apprehending arrest in C.R.No.30 of 2022 registered with Dapoli Police Station for the offences punishable under Sections 376, 377, 323, 504, 506 of the Indian Penal Code, 1860 and Section 66(E) of the Information Technology Act, 2000, the Applicant has preferred this Application seeking pre-arrest bail.
2. The Respondent No.2 – first informant, is the wife of the Applicant. Their marriage was solemnized on 19th December, 2021.
3. The Respondent No.2 claimed that on 25th December, 2021, the Applicant turned her out of the matrimonial home. The Applicant flatly refused to allow the Respondent No.2 to resume cohabitation. Thus, on 9th February, 2022, the Respondent No.2 lodged a report with Dapoli Police Station with the allegations that their betrothal ceremony was held on 6th July, 2021 at Malavali, Tal. Maval, Dist.

Pune. The Applicant had gifted her a mobile phone handset. The Applicant used to have vulgar chats with the Respondent No.2, despite protest by Respondent No.2. After the date of marriage was fixed, the Applicant stayed back at the house of the Respondent No.2. On 28th August, 2021, the Applicant, Respondent No.2 and her family members had gone for an outing at Harne Bunder. The Applicant allegedly had forcible sexual relations without the consent of Respondent No.2. The Applicant allegedly also made the Respondent No.2 to forward her seminude pictures, on phone.

4. Post marriage, the Respondent No.2 alleges that, on the night of 22nd December, 2021, the Applicant subjected the Respondent No.2 to unnatural sexual intercourse. On the next day also, the Applicant allegedly had sexual intercourse against the order of nature. When the Respondent No.2 protested, the Applicant assaulted her.

5. On 24th December, 2021, the Applicant called her parents and turned Respondent No.2 out of her matrimonial home. A meeting was held on 2nd January, 2022, wherein the Applicant falsely alleged that the Respondent No.2 had relations with other boys and showed the pictures which the Respondent No.2 had forwarded to the Applicant, at the latter's instance, to bolster up the false allegations. Hence, the report.

6. When the Application was listed before the Court on 11th April, 2022, this Court directed the Applicant to implead his wife as a party Respondent to this

Application, as the offences have their genesis in the matrimonial discord. Having regard to the nature of the allegations, till the Application was heard, it was further directed that no coercive steps be taken against the Applicant, subject to the Applicant co-operating with the investigation.

7. Pursuant to the notice, the Respondent No.2 entered appearance. I have heard Mr. Phalke, learned Advocate for the Applicant, Mrs. Lohakare, learned APP for the State and Mr. Shubham More, learned Advocate for the Respondent No.2 at some length. With the assistance of the learned Advocates for the parties, I have carefully perused the allegations in the FIR and the documents annexed with the Application.

8. The learned Advocate for the Applicant submitted that the allegations of rape and subjecting the Respondent No.2 to unnatural sexual assault, are required to be appreciated in the context of the developments which took place within a few days of the marriage. The learned Advocate for the Applicant submitted that within a couple of days of the marriage, the Applicant chanced upon the data in the mobile phone of the Respondent No.2, which revealed that the Respondent No.2 had relations with number of persons and had also shared her obscene pictures. Thus, the Applicant confronted the Respondent No.2 and when the latter confessed, the Applicant declined to continue the martial bond.

9. To give a counter blast to the legitimate stand of the Applicant, a false

prosecution was initiated by the Respondent No.2. To lend support to this submission, the learned Advocate for the Applicant placed reliance on a complaint lodged by the Applicant with Lonavala Rural Police Station on 24th January, 2022. The transcripts of the conversations between the Respondent No.2 with other persons as well as with the Applicant, on 2nd January, 2021, were also placed on record.

10. The learned APP, on the other hand, submitted that the allegations in the FIR make out a prima facie case for the offences punishable under Sections 376 and 377 of the Indian Penal Code. At this nascent stage of investigation, the endeavor of the Applicant to test the veracity of the allegations in the FIR, does not deserve to be entertained. To facilitate further investigation, especially the collection and analysis of the data in the mobile phone handset of the Applicant, custodial interrogation of the Applicant is indispensable. Thus, the Application deserves to be rejected.

11. Supplementing the aforesaid submissions of the learned APP, the learned Advocate for the Respondent No.2 urged that the allegations in the FIR are not restricted to marital rape. There is a specific and categorical allegation that even before marriage, on 28th August, 2021 at Harne Bunder, the Applicant had ravished the Respondent No.2. Therefore, the Applicant does not deserve the exercise of discretion in his favour.

12. I have given anxious consideration to the aforesaid rival submissions.

First and foremost, the context needs to be kept in view. The marriage was solemnized on 19th December, 2021. On 24th December, 2021, the parents of the Respondent No.2 were allegedly called at her matrimonial home and on 25th December, 2021, within a week of the marriage, the Respondent No.2 was allegedly turned out of the matrimonial home. The Respondent No.2 alleges that on 22nd December, 2021 and 23rd December, 2021, the Applicant had subjected her to unnatural sexual assault. And when she resisted, the Applicant assaulted her.

13. Evidently, the marital discord immediately stuck the life of the Applicant and the Respondent No.2. The cause for the same, is a matter of evidence and trial.

14. The attendant circumstances, at this stage, assume significance. The claim of the Applicant that he had found objectionable material reflecting upon the pre-marital life of the Respondent No.2 and that was the cause for the dispute, is sought to be substantiated by placing the transcript of the conversations/chats, and the complaint lodged by the Applicant. The complaint dated 24th January, 2022 lodged by the Applicant, contains the aforesaid contentions of the Applicant. The transcripts of the conversations between the Respondent and the other persons as well as the Respondent No.2 and the Applicant, the authenticity and veracity of which are again matters of evidence and trial, prima facie, lend support to the claim of the Applicant, especially the transcript of the conversation between the Applicant and the Respondent No.2 on 2nd January, 2022, gives an indication of the cause for trouble in

the paradise.

15. I am conscious, at this juncture and in this proceeding, it may not be appropriate to delve more on this aspect. However, the situation which obtains is such that the material on record, prima facie, indicates that the contentions of the Applicant, cannot be said to be such as to be unworthy to compete in probability with that of the prosecution version. This makes out a prima facie case for exercise of discretion in favour of the Applicant.

16. In the light of the situation in life of the parties, the possibility of fleeing away from justice, seems to be remote. The apprehension on the part of the prosecution of tampering with evidence, can be taken care of by imposing appropriate conditions so as to facilitate an effective investigation. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) In the event of the arrest of the Applicant – Tushar Harihar in C.R.No.30 of 2022 registered with Dapoli Police Station for the offences punishable under Sections 376, 377, 323, 504, 506 of the Indian Penal Code and Section 66(E) of the Information Technology Act, 2000, he be released on bail on furnishing a PR bond in the sum of Rs.25,000/- and one or two sureties in the like amount.

(iii) The Applicant shall co-operate with the investigation.

(iv) The Applicant shall report to the Investigating Officer on 2nd Saturday of

every month from 10.00 a.m. to 1.00 p.m. for a period of three months or till the filing of the charge sheet whichever is earlier.

(v) The Applicant shall surrender his mobile phone handset before the Investigating Officer within one week.

(vi) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the Respondent No.2, her family members or rest of the prosecution witnesses.

(vii) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

(N.J.JAMADAR, J.)