

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

ANTICIPATORY BAIL APPLICATION NO.1110 OF 2022

Hitesh Ashu Garg

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Vinay Bhanushali with Mr. Jitendra Bakliwal and Mr. Deepak Saxena
i/b. M/s. Legal Prism for the Applicant.

Mr. N.B. Patil, APP for Respondent-State.

Ms Asmita Jaiswal for the Intervenor/ orig. complainant.

Mr. S.K. Patil, API, Kasturba Marg Police Station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 25th APRIL, 2022.

P.C.:-

1. This is an application under Section 438 of Cr.P.C. for pre-arrest bail in C.R. No.344 of 2022 registered with Kasturba Marg Police Station, Mumbai, for offences punishable under Sections 376 and 420 of the IPC.

2. Heard Mr. Bhanushali, learned counsel for the Applicant and Ms Asmita Jaiswal, learned counsel for the Complainant and Mr. N.B.

Patil, learned APP for Respondent-State. I have perused the records and

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considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by the prosecutrix. A perusal of the FIR reveals that the prosecutrix was married in the year 2009. She claims that she has been residing separately from her husband since the year 2010 and that she has given her written divorce chit in presence of village panchayat. She has a daughter of aged 11 years. She registered herself on a matrimonial site-Shadi.com and she learnt that the Applicant herein, who is a widower has also registered on the same matrimonial site. She gathered personal information from the Applicant and they were in constant touch with each other. She has stated that in June-2021 the Applicant smeared vermilion in her forehead as token of marriage and accepted her as a wife and promised to marry her and give her status of wife. She claims that the Applicant had physical relationship with her under the promise of marriage. The Applicant subsequently refused to marry her and hence, she filed the FIR alleging rape.

4. Learned counsel for the Applicant states that the Applicant had not registered on Shadi.com but had registered on Jeevansthi.com, which statement is not disputed by the learned counsel for the Complainant. Learned counsel for the Applicant has placed on record extract of the

details given by the Applicant on the said website. A perusal of the said extract reveals that the Applicant had disclosed his marital status as 'awaiting divorce', which fact indicates that the prosecutrix was well aware that the Applicant was a married man and his divorce petition was not yet concluded. It is also to be noted that the prosecutrix herself was married and has a daughter of 11 years from the previous marriage. Apart from her statement that she has given a divorce chit before village panchayat, there is nothing on record to indicate that her first marriage was dissolved. The Applicant and the Complainant are adults, who have engaged in sexual activity. Prima facie there is nothing on record to indicate that the prosecutrix had relationship with the Applicant under misconception of fact. On the contrary, the material on record reveals that the relationship was consensual and it was only when the Applicant failed to marry her, the complaint was filed.

5. Considering the above facts and circumstances, this is not a case which would justify custodial interrogation. Hence, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in C.R. No.344 of 2022 registered with Kasturba Marg Police Station, Mumbai, the Applicant is ordered to be released on bail

on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;

(ii) The Applicant shall report to the concerned Investigating Officer for a period of two days on 28/04/2022 and 29/04/2022 between 11.00 a.m. to 2.00 p.m. and thereafter as and when required by the Investigating Officer.

(iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

6. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)