

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

ANTICIPATORY BAIL APPLICATION NO. 1215 OF 2022

Ganesh Ramchandra Naik	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Niteen Pradhan, Advocate a/w. Mr. S. Dharmadhikari,
Gunjan Mangla i/b. Siddharth Desai for the Applicant.
Ms. Rutuja Ambekar, APP for the State.
Ms. Lucy Massey for the Intervenor.
Mr. Umesh Garali, PI, CBD PS, Navi Mumbai.

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1216 OF 2022**

Ganesh Ramchandra Naik	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Shirish Gupte, Sr. Advocate a/w. Ms. Supriya Kak,
Mr. S. Dharmadhikari and Gunjan Mangla i/b. Siddharth Desai
for the Applicant.
Ms. Lucy Massey for the Intervenor.
Ms. A.A. Takalkar, APP for the State.
Mr. Sham Khanderao Shinde, Sr.PI, Nerul Police Station.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th MAY, 2022.

P. C. :-

. These Applications are filed under section 438 of Cr.P.C. for pre-arrest bail in C.R.No.60/2022 registered with CBD Belapur Police Station, Navi Mumbai for offences punishable under sections 506(2),

417 of the Indian Penal Code r/w. Section 30 of Arms Act and C.R.No.144/2022 registered with Nerul Police Station for offences punishable under section 376(2)(n) of the Indian Penal Code.

2. Heard Mr. Gupte, learned Senior counsel and Mr. Pradhan, learned counsel for the Applicant, Ms. Rutuja Ambekar and Ms. A.A. Takalkar, learned APPs for the State and Ms. Lucy Massey, learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the First Information Reports (FIRs) dated 15/04/2022 and 16/04/2022 lodged by the complainant. A perusal of both these FIRs reveal that the Applicant and the complainant were in love with each other since the year 1995 and had consensual physical relationship. In her supplementary statement, the Complainant has disclosed that her parents did not approve her relationship with the Applicant. In the year 2002 they got her married to Mr.xxxx, a person from US. She divorced him in the year 2004 and continued her relationship with the Applicant. The Complainant has alleged that the Applicant had

assured her that he would take care of her and the child. Hence, she took a conscious decision to have a child. She claims that in the year 2006 in her sixth months of pregnancy, she went to New Jersey at the instance of the Applicant. She gave birth to a baby boy and gave him her name. She has alleged that when the child was two months old, the Applicant brought them to India and since 2007 to 2017, they lived in a room at Nerul, provided by the Applicant. During this period, the Applicant used to visit her thrice a week.

4. The FIR reveals that since December, 2017, their relationship got strained. The Complainant alleges that the Applicant did not treat her well, avoided receiving her calls and did not give sufficient money for household expenses. He used to constantly abuse and quarrel with her. In the month of March/April, 2021, the Applicant called her and the child to his office. They had lunch together and when she questioned him whether he would give his name to the child, he pulled out his revolver and told her not to harass him and threatened to kill them and to end his life. On these allegations, the aforesaid crime came to be registered.

5. The FIRs prima facie reveal that the Applicant and the

complainant, both adults, were in relationship since 1995 and the sexual relationship between them was consensual. It is only after registration of the crime that the Complainant gave a supplementary statement wherein she has accused the Applicant of having forcible sexual relationship with her during the year 2010 to 2017, while she was still in live-in-relationship. It is prima facie difficult to hold that acknowledged consensual sexual relationship in the course of long live-in relationship can be termed as 'rape' within the meaning of section 375 of the IPC. Even if the allegations in the complaint are taken at face value and accepted in entirety would not prima facie constitute offence of rape punishable under Section 376 of the IPC. Under the circumstances, pre-arrest bail cannot be rejected solely on the ground that the Applicant has produced copies of the complaint which were given to the police authority or for the reason that he is a member of Legislative Assembly.

6. The allegations of threat to kill are made after a period of one year. Moreover, the FIR reveals that on the relevant date, the Complainant, the Applicant and the child had lunch together and when the Complainant broached the topic of giving the child the father's name that the Applicant told her not to harass him and threatened to

kill them and kill himself. The question whether the Applicant had intention to cause an alarm or whether it was a mere outburst of frustration is a question which needs to be considered at the trial. Be that as it may, Mr. Pradhan, learned counsel for the Applicant makes a statement that the Applicant shall deposit his revolver before CBD Belapur Police Station within a period of one week from the date of this order.

7. The nature of accusations do not justify custodial interrogation. For the forgoing reasons, in my considered view, this is a fit case to exercise the discretion in favour of the Applicant. Hence, the application is allowed on the following terms and conditions :-

(a) In the event of the arrest of the Applicant in C.R.No.60/2022 registered with CBD Belapur Police Station, Navi Mumbai and C.R.No.144/2022 registered with Nerul Police Station, he shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- each with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer

for two days from 09/05/2022 between 11:00 a.m. to 02:00 p.m.

(c) The Applicant shall not interfere with the complainant and other witnesses and/or shall not tamper with the evidence in any manner ;

(d) 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.

(e) The Applicant shall deposit his revolver before CBD Belapur Police Station within a period of one week from the date of this order.

8. The Applications stand disposed of.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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