

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1795 OF 2022

Ramesh Hasha Porji ...Applicant

Versus

The State of Maharashtra and Another ...Respondents

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SUBHASH
PAREKAR

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Mr. K.S. Patil a/w Ms. Saili N. Dhuru , for the Applicant.

Ms. Pallavi N. Dabholkar , APP for the State.

Mr. P.S. Hagare i/b Mr. Ranjeet Patil, for original complainant /
Respondent No. 2.

CORAM: N. J. JAMADAR, J.

DATED : 5th JULY, 2022

PC:-

1. This is an application for pre-arrest bail in connection with C. R. No. 159 of 2022 registered with Taloja Police Station, Navi Mumbai, for an offence punishable under sections 376 (2)(n) and 506 of the Indian Penal Code, 1860 (“the Penal Code”).

2. The first informant-prosecutrix lodged a report against the applicant that on 4th April, 2022, the applicant had called the prosecutrix near Nawade stop bridge on the pretext of providing her work in a Canteen. The applicant made her to board a Wagner car and took her to a farm house near village Dhansar and forcibly ravished her in a hut, with a thatched roof. The applicant allegedly gave threats to eliminate the prosecutrix and her children in the event she disclosed the incident to others.

3. The first information report was lodged on 4th June, 2022 with an explanation that the prosecutrix was traumatized, she fell sick and after she gathered her bearings, she approached the police station and lodged the report.

4. Apprehending arrest, the applicant preferred an application for pre-arrest bail before the learned Sessions Judge. The prosecutrix appeared and filed an affidavit to the effect that the report was lodged on account of misunderstanding. The learned Sessions Judge was not prepared to take into account the said affidavit to extend the benefit of pre-arrest bail. The learned Sessions Judge was persuaded to reject the application.

5. When the matter was listed before the Court yesterday, the learned APP made a statement that the statement of the victim/prosecutrix has been recorded under section 164 of the Code of Criminal Procedure, before the learned Magistrate, Panvel. Thereupon, the matter came to be posted today to place a copy of the said statement before the Court.

6. The learned APP has tendered a copy of the said statement. It indicates that the prosecutrix had stated before the learned Magistrate that the physical relations between the prosecutrix

and applicant were consensual. The prosecutrix claimed to have lodged report as applicant did not provide the financial assistance to run a Canteen as promised.

7. The prosecutrix has filed an affidavit in reply. Paragraph 5 to 9 of the said affidavit read as under.

5. I further say that the allegation made by me in the FIR filed against the applicant is such that thereafter he took me to a hut wherein he established physical relation with me without my consent. I further say that on the basis of the above allegation, an FIR bearing CR No. 159 of 2022 was registered at Taloja Police Station, Dist. Navi Mumbai for the offences punishable under sections 376 (2)(n) and 506 of Indian Penal Code against the applicant.

6. I further say and admit that the physical relationship established on 4/04/2022 between myself and the applicant was with my consent. I further say that no force, threaten or coercion was induced by the applicant to establish the said physical relationship. I further say that after the said incident, I was in contact with the applicant.

7. I further say that the FIR lodged by me against the applicant is an outcome of a misunderstanding which had taken place between us due to the ill health of the applicant and some business transaction.

8. I say that I am aware about the fact that the applicant has filed an application in this Hon'ble Court seeking Anticipatory bail. I say that I do not have any grievance against the present applicant. I therefore have no objection if the above captioned Anticipatory bail application filed by the applicant is allowed and he is released on Anticipatory bail by this Hon'ble Court.

9. I say that I am filing this affidavit on my own free will without any fear or pressure or undue

influence. Considering the fact that the FIR filed against the applicant was an outcome of a gross misunderstanding taken place between us, I therefore express that I have no objection if the above Anticipatory bail application is allowed.

8. The prosecutrix appeared before the Court, I have made enquiry with the prosecutrix to ascertain her voluntariness. The prosecutrix asserted that she has filed the affidavit out of her volition and there is no coercion and duress.

9. The situation which thus obtains is that, the prosecutrix has made a statement before the learned Magistrate on oath that the first information report was lodged out of misunderstanding and the physical relations were consensual. In addition, the prosecutrix had filed an affidavit before this Court as well.

10. In view of the aforesaid development, the applicant can be said to have made out a prima facie case as an inconsistent version, on oath, emerges. The delay of two months in lodging the first information report, in the aforesaid context, also becomes critical. In the light of attendant circumstances and situation in life of the parties, the custodial interrogation of the applicant does not seem warranted. The applicant can be directed to cooperate with the investigation and appear before the investigating officer so that further investigation is not hampered.

Hence, the following order.

ORDER

- i) The application stands allowed.
- ii) In the event of the arrest of the applicant Ramesh Hasha Porji in CR No.159 of 2022 the applicant be released on bail on executing a P.R. Bond in the sum of Rs.30,000/- and one or two sureties in the like amount.
- iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- iv) The applicant shall cooperate with the investigation and report to the Investigating Officer as and when directed.

[N. J. JAMADAR, J.]