IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2972 OF 2021

Vivek Chandrahas .... Applicant
Versus
The State of Maharashtra .... Respondent
....
WITH
INTERIM APPLICATION NO.589 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.2972 OF 2021

Mr. Shirish Gupte, Senior Advocate a/w. K. Balkrushnan i/b. Ganesh Bhujbal, for the Applicant.
Smt.A.A. Takalkar, APP for the Respondent-State.
Mr. Hrishikesh U. Ambre, Advocate for the Intervener.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2022

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.1040/2021 registered at Sakinaka Police Station, Mumbai on 7.8.2021 under Sections 420 and 376 of the Indian Penal Code.

2. Heard Shri Shirish Gupte, learned Senior Counsel for the applicant, Smt.A.A. Takalkar, learned APP for the State and Shri Hrishikesh Ambre, learned counsel for the Intervener.

3. The applicant is already protected by an interim order passed by this Court (Coram: Nitin W. Sambre, J.) vide order dated 10.12.2021. In paragraphs-3 and 4 of that order, this Court had observed as to why ad-interim order was passed. I am inclined to agree with those observations for the following discussion.

4. The FIR is lodged by the prosecutrix herself on 6.7.2021. She has stated that she had joined Air India as an air hostess since 2004. One Laxmi was her friend. Both of them were preparing for the examination to become pilot. For that purpose they needed Nationality and character certificate. Laxmi introduced the informant to the present applicant who was working with Navy at the post of Senior Pilot. The informant started communicating with him, the applicant used to give important tips about preparation for the examination. Slowly their friendship grew and they were exchanging

information about their family members. The FIR mentions that he had informed her about his divorce which had taken place in the year 2012. He had further told her about the reasons why he had taken divorce from his wife and he had 13 years old son. During their conversation, he had told the informant that he wanted to get married. In January, 2018, he told the informant that he wanted to marry her. At that time, the informant had not accepted his proposal. In July, 2018 since they were not in touch for two days, she called on his mobile phone which was received by his cousin. At that time she was told that the applicant was admitted in a hospital. The cousin gave that phone call to the applicant. At that time the applicant told her that he was depressed and had consumed poison. Thereafter the informant did not break their relations but kept in touch off and on. However, whenever he spoke about the marriage, she avoided the topic. In the meantime, she wanted to take admission in an institute at Hyderabad but she did not have sufficient funds. At that time the applicant had paid her fees in that institute. He used to send gifts to her. Some of the money she returned. In January, 2019 they stopped talking with each other. Since February, 2019 again they reestablished the conversation. In April, 2019, the informant slowly changed her opinion and decided to consider the proposal of marriage seriously. The FIR mentions that he had told her that he would discuss with his parents and that both of them should purchase a property. The informant started trusting him more and more. In June, 2019, the applicant was to visit Mumbai. At that time the informant told him to bring his documents regarding divorce and other details. The FIR mentions that on 26.6.2019 they stayed in a hotel and at that time they had their physical relations. The informant asked about the documents relating to his divorce but he gave excuses and did not show documents to her. The FIR goes on mentioning few instances when they had stayed together in hotel in Chennai in July, 2019. Even there they had their physical relations. The same thing was repeated in the hotel at Hyderabad. During all this period, the applicant only promised to show his documents of divorce, but, did not actually show any documents. He slowly started avoiding the subject of marriage. Even thereafter in December, 2019 they had their physical relations in a hotel in Mumbai. In January, 2020 she had gone to USA for her training. She returned in March, 2020. In April, 2020 some third person called her and told her to verify about the applicant's intentions. In November, 2020 the informant confronted him with all his promises, but, there was no progress in the direction of taking step of marriage. The FIR mentions that she returned Rs.7.50 Lakhs out of Rs.14 Lakhs given by the applicant to her for training. Ultimately the informant lodged her FIR on the ground that the applicant established physical relations with her on false promise of marriage and had given false excuses.

5. Learned Senior Counsel for the applicant submitted that it was purely a consensual relationship. The applicant had helped the informant financially and their period of togetherness and physical relations was not small. He submitted that the WhatsApp chats annexed to this

application show their close love affair. He submitted that it was impossible to believe that the informant was misled into believing that ultimately they were to get married and, therefore, she had established physical relations.

6. Learned Senior Counsel also relied on the letter annexed to the intervention application sent by the aforementioned Laxmi wherein she has stated that she had informed the informant about the applicant's marital status.

7. Learned APP as well as learned counsel for the intervener relied on the contents of the FIR. Both of them submitted that only because the promise was made by the applicant of marrying the informant she had consented to have physical relations. It is a clear case of cheating and obtaining consent by fraud. Therefore, the consent is vitiated and the offence of rape is made out. They submitted that considering seriousness of the offence, his custodial interrogation is necessary.

8. I have considered these submissions. The FIR itself

shows that it was not a short term relationship. They had their physical relations in different hotels of Mumbai, Chennai, Hyderabad etc. On all these occasions, the informant was aware that the applicant was married but she wanted to see the documents relating to his divorce. The applicant never produced original documents right from the beginning and yet, the informant continued having physical relations with him.

9. Another aspect of this matter is about the financial help extended by the present applicant to the first informant. The FIR itself mentions that he had given almost Rs.14 Lakhs for her training. This also indicates their close relations and the applicant's genuine intentions to help her. Apparently thereafter something had gone wrong in their relationship and the FIR is lodged.

10. Considering this background, the applicant's custodial interrogation would not be necessary. It is made clear that all these observations are made only for the purpose of deciding this anticipatory bail application.

11. In this view of the matter, the applicant can be protected by an order of anticipatory bail. Hence, the following order :

ORDER

(i) In the event of his arrest in connection with C.R.No.1040/2021 registered with Sakinaka Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) The applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.

(iii) Anticipatory Bail Application stands disposed of accordingly. With disposal of this application, I.A. No.589/2022 also stands disposed of.

PRADIPKUMAR PRAKASHRAO DESHMANE

Digitally signed by PRADIPKUMAR PRAKASHRAO DESHMANE
Date: 2022.02.24 17:02:41 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)