

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2919 OF 2022**

Prem Santosh Thakur ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Kuldeep Patil i/b Sali N. Dhuru for the Applicant.
Ms. M. M. Deshmukh, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 20 OCTOBER 2022

P.C. :-

This is an application under Section 438 of Code of Criminal Procedure for grant of anticipatory bail.

2. The applicant is apprehending his arrest in Crime No. 275 of 2022 registered at Khargar police station, Navi Mumbai for the offences punishable under Section 376(2)(n), 323, 504, 506 of Indian Penal Code.

3. It is the case of the prosecution that the present applicant and the prosecutrix got acquainted with each other through social media. The present applicant told the prosecutrix that he wants to marry her.

He, however, put one condition that he wants to be sure that the girl to whom he wants to marry is virgin and told her to allow him to have sexual intercourse with her. According to the prosecution, as the prosecutrix was in love with the present applicant and wanted to marry him, she allowed the applicant to have sexual intercourse with her. According to the prosecution, the applicant then on many occasions on the false promise of marriage committed sexual intercourse with the prosecutrix and ultimately refused to marry her.

4. I have heard the learned counsel for the applicant and the learned APP for the respondent-State.

5. The learned counsel for the applicant submits that admittedly on the date of alleged incident the prosecutrix was major. It is submitted even if the allegations are presumed to be true, the only interference which can be drawn from the said allegations is that the alleged relationship was consensual. It is submitted that considering these facts and circumstances, the applicant may be released on anticipatory bail.

6. The learned counsel for the applicant has placed on record judgments of Hon'ble Supreme Court and Hon'ble High Court wherein according to the learned counsel for the applicant, in similar circumstances the anticipatory bail was granted to the accused therein.

7. On the other hand, the learned APP for the respondent-State submits that the present applicant is involved in the serious offence of rape. It is submitted that considering the nature of offence, the applicant may not be released on anticipatory bail.

8. I have perused the First Information Report lodged by the prosecutrix. It appears that the applicant after proposing the prosecutrix for marriage asked her to prove that she is virgin. It appears that the prosecutrix to prove that she is virgin and as she was assured by the applicant that he was going to marry her she allowed him to have sexual intercourse with her. The alleged act, therefore, cannot be said to be consensual.

9. Considering the nature of allegations, I am not inclined to release the applicant on anticipatory bail. Facts of two cases can never be identical and therefore, there is no point in referring to the judgments cited by the learned counsel for the applicant, at the stage of bail.

10. The Application is rejected.

(N.R. BORKAR, J.)