

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (ABA) No.445/2022

Vikas Joshi V State of Maharashtra thr PSO PS Mehkar, Buldhana

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri F. Mirza, Advocate for applicant.
 Shri T.A. Mirza, APP for State.
 Shri S.B. Gandhe, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR, J.

DATE : 11-07-2022

The applicant has approached to this Court by filing the present application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in connection with Crime No.0279/2022 dated 17-05-2022 registered with Police Station Mehkar, District Buldhana for the offences punishable under Sections 376, 376(2)(n), 354-C, 417, 292 of the Indian Penal Code and Sections 67 and 67(a) of the Information Technology Act.

2. The learned Counsel for the applicant submits that even if the allegations made in the FIR are taken on its face value, no offences attract under Sections 354-C, 420 and 292 of the IPC. He further submits that there was a love affair between the

applicant and the victim and there was consensual physical relations as well.

3. It is submitted that considering the fact that the victim is having children, there is no question of making any false promise of marriage. Thus, he submits that the applicant has been falsely implicated in the alleged offence.

4. The learned Advocate for the applicant further submits that this Court while granting ad-interim anticipatory bail vide order dated 27-06-2022 directed the applicant to attend the Police Station. Accordingly, he attended the Police Station. He further points out that he has surrendered his mobile phone to the police and as such nothing is to be recovered from the applicant. He submits that therefore, further custody of the applicant is not necessary.

5. The learned APP strongly opposes the application and submits that the offence is serious and considering the allegations made in the FIR, the applicant may not be released on bail.

6. The learned Advocate for the victim reiterates the submissions of the learned APP and further submits that considering the conduct of the applicant, this Court may not grant pre-arrest bail to the applicant.

7. I have perused the case diary, application and the reply of the learned APP.

8. The allegations made in the FIR itself, prima facie, show that there was consensual physical relations in between the applicant and the victim. As far as the offence registered under Section 67 and 67(a) of the Information Technology Act is concerned, the Police have already seized the mobile phone of the applicant.

9. The applicant attended the Police Station as directed by this Court and there is no complaint of misuse of liberty by the applicant. Thus, considering the allegations made in the FIR particularly which show that there was consensual physical relations in between the applicant and the victim for last about 10 to 20 years and further considering the fact that the mobile phone has already been seized by the Police, I am of the opinion that custody of the applicant is not necessary. In the circumstances, I pass the following order:-

ORDER

- i) Application is allowed.
- ii) The order dated 27-06-2022 is confirmed.
- iii) The applicant shall attend the concerned Police Station as and when his presence is required by the Investigating Officer.

iv) Liberty is granted to the State that in case the applicant repeats the similar offence, the State may file application for cancellation of the bail.

(Anil S. Kilor, J.)