

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.283 OF 2023

TUKARAM BABAN TARDE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Adv. V. D. Salunke  
APP for Respondents: Mr. G. O. Watamwar  
Advocate for Asst to P.P. : Mr. Hemant Surve  
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**CORAM : R.M. JOSHI, J**

**DATE : JUNE 13, 2023**

**PER COURT :**

1. Applicant apprehends arrest in connection with C.R. No. 78/2022 registered with Ambad Police Station for the offences punishable under Sections 376, 376(2) (n), 506 read with Section 34 of the Indian Penal Code.

2. Informant/Victim lodged report to the police by stating that she was employed with Dr. Bhojne. The alleged incident occurred on 10.01.2022 at about 04.30 pm. When she was at Jamuvant Hospital present Applicant, who was the owner of medical store near the said hospital, came and caught hold of her. She claims that she slapped him. At that time Dr. Bhojne, who is paternal uncle of the victim, told her her that the

wife of the Applicant is mentally ill and that Applicant is going to divorce her. Dr. Bhojne further told her that he will ask Applicant to perform marriage with her. She relied upon the statement of Dr. Bhojne. Thereafter about 08 to 10 days Applicant assured her of marriage after divorcing his wife and therefore, they had physical relationship. It is further stated in the report that from time to time Applicant had established forcible physical relations with her. Since the Applicant was avoiding to perform marriage with her she started insisting for the marriage and hence, Applicant on 29.01.2023 took her to his house at Aurangabad. Father of the victim lodged missing report and therefore, police brought both of them to Ambad police station. It is stated that on account of the threat given by the Applicant she gave false statement to the police. With these allegations report is lodged.

3. Learned Counsel for the Applicant states that victim is major and considering the fact that the report is lodged by her after about a year of occurrence of first incident. It is further stated that the relationship, if any, between the Application and

the victim are consensual in nature and having regard to the statement made to the police that she went her on own on 29.01.2023 is sufficient to show that there is no substance in the FIR. It is further pointed out that the co-accused has already enlarged on bail.

4. Learned APP and learned Counsel for the informant opposed the application by submitting that even if the victim is major the consent for the sexual relationship was obtained by the Applicant by giving false promise. It is stated that the said consent is not unequivocal and therefore, the offence punishable under Section 376 is made out. In support of their submissions, they placed reliance on following case laws: Sagar Kapoor Vs. The State of Haryana, CRM-M-35393/2022, Hem Kumar Sharma Vs. The State of H.P., Cri. Misc. Petition No. 1279/2022, Shaikh Ahmed Vs. Union Territory – J & K, Bail Application No. 133/2021, Rahul Vishnoi Vs. The State of Uttarakhand, A.B.A. No. 4/2022, Akhilesh Singh Vs. The State of Bihar, Cri.M.A./40409/2020, Milind Matale Vs. The State of Mah, Cri.Appeal/217/2020, Sachin Muneshwar Vs. The State of Mah, A.B.A./218/2015, The State of Mah Vs. Md.

Sajid Hussain, Cri.Appeal/1402/2007 and Manju Devi Vs. Onkarjit Ahluwalia, Cri.Apeal/570/2017.

5. It is also pointed out that the Applicant has entered the house of victim on 13.03.2023 and has threatened the informant and her mother and pressurized them for withdrawal of the complaint. It is submitted by Counsel for Applicant that in respect of said alleged incident the Applicant is already enlarged on bail. It is further contended that the said report is false and lodged with a view to create ground to oppose present bail application.

6. There is no dispute about the fact that the informant/victim is major. Perusal of the statement given to the medical officer shows that the sexual relationship between Applicant and the informant was not by force but it was consensual relationship. The question now remains for consideration is as to whether there is reason to believe the said relationship was established by false promise to marriage or not.

7. Consideration of facts as they appear from the material on record indicate that the first incident

of physical relationship between the Applicant and the informant occurred around one year prior to lodging of FIR. Thereafter also they continued their relationship. If the informant was insisting for the marriage and Applicant had not responded to the same, then in that case it does not stand to any reason why the informant would visit the place of the Applicant and to stay there for the considerable period of time. Pertinently after missing report was lodged by the father of the informant, the statement is made by her to the police officer stating that she on her own went to the said place and she has no complaint against anyone.

8. In this factual backdrop, the filing of the report after one year creates serious doubt about allegations made therein. There is no explanation as to why almost a years' time is taken by the informant to lodge report. In view of the fact that both Applicant and informant are major and that the physical relations apparently are consensual in nature, it is fit case wherein liberty of the Applicant needs to be protected.

9. Hence, the order:

**O R D E R**

- (i) In the event of arrest of the Applicant in connection with C.R. No. 78/2022 registered with Ambad Police Station for the offences punishable under Sections 376, 376(2)(n), 506 read with Section 34 of the Indian Penal Code, he shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one solvent surety in the like amount.
- (ii) He shall attend the concerned police station once in a week till filing of the charge-sheet.
- (iii) He shall not contact the prosecution witnesses directly or indirectly.
- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) He is further directed to cooperate the investigating agency for further investigation.

**(R.M. JOSHI, J.)**

Malani