

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.615 OF 2023

SAMADHAN LOTAN CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant: Mr. B. S. Deshmukh
APP for Respondents: Mrs. G. L. Deshpande

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 11, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 105 of 2023 registered with Parola Police Station, Tq. Parola, Dist. Jalgaon for the offences punishable under Sections 376, 341, 323, 504, 506, 501 and 452 of the Indian Penal Code.

2. First informant is the Forest Guard. She claims that she is married but having disputes with her husband and hence, they are staying separately. It is alleged that on 08.04.2023 while she was on duty Applicant came and obstructed her and also assaulted her with some pointed weapon. It is further alleged that Applicant had threatened her to keep physical

relations with him or else he will deface her. She further has categorically stated in the report that since last three years Applicant is keeping forcible physical relations with her, however, now she is now interested to continue with the same. There is allegation that on 25.03.2023 Applicant committed forcible sexual assault on her and also threatened to kill and make her photographs viral. Due to this threat, she did not complain about the incident, however, she stopped having any communication with him.

3. Learned Counsel for the Applicant submits that from the FIR it is clear that the informant is major and married woman and she is aware about the consequences of keeping physical relationship. It is his submission that period of three years for which physical relations were maintained is long enough to infer that it is a consensual relationship. It is his further contention that even after lodging of the FIR Applicant and informant are staying together and in fact they have travelled together.

4. Learned APP opposed the application by

submitting that the earlier consensual physical relationship, if any, would not give any right to the Applicant to ravish the informant as particularly stated in the FIR about the incident dated 25.03.2023. It is also submitted that as far as the incident of 08.04.2023 is concerned, apart from the statement of informant herself there is statement of eye witness who has seen occurrence of incident. By referring to the medical certificate, it is submitted that there are abrasions caused to the informant which indicates occurrence of the incident on 08.04.2023.

5. In order to ascertain as to whether there is substance in the contention of the informant that on 25.03.2023 incident of forcible physical relation has occurred with her and since then she had stopped having communication with Applicant, CDR of mobile phones of the Applicant as well as informant were called. The CDR indicates that even after 25.03.2023 there is communication between Applicant and informant and there are incoming and outgoing calls on the mobile phone of the informant. This indicates that the statement made in the FIR about she having stopped communication with

Applicant owing to the incident of 25.03.2023 is not correct. There is no dispute about the fact that both Applicant and informant are major. There is substance in the contention of learned Counsel for the Applicant that period of three years is long enough to infer consensual physical relations between them.

6. As far as incident of 08.04.2023 is concerned, perusal of the medical report indicates that even no reference of occurrence of any incident of 08.04.2023 has been made to the medical officer while giving history. It is practically impossible that the informant does not give information about occurrence of incident of 08.04.2023, if she was assaulted on that day. Merely because, during the medical examination abrasion found on her person, it cannot be inferred that incident as alleged in the report has occurred. It is pertinent to note that the informant is working as Forest Guard. Having regard to the nature of work, the causing of abrasions is very much possible.

7. In such circumstances, there is substance in the contention of Counsel for the Applicant that this

could be a case of consensual physical relations and false implication due to some dispute between them. Hence, application stands allowed by confirming order dated 25th April, 2023.

(R.M. JOSHI, J.)

Malani