

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

ANTICIPATORY BAIL APPLICATION NO.1283 OF 2023

DIPAK BABURAO KAMBLE

VERSUS

THE SUPERINTENDENT OF POLICE AND ANOTHER

...

Advocate for Applicant : Mr. V. S. Wakale

APP for Respondents: Mr. S. W. Munde

Advocate for informant to Assist PP : Mr. C. C.
Deshpande

...

CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 21, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 284 of 2023 registered with Mantha Police Station, Dist. Jalna for the offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code.

2. Informant claims that after death of her husband she started staying with her parents. In the year 2021, she was acquainted with the Applicant, who had proposed her for the marriage and also assured to take care of her children from first marriage. He asked for the physical relationship, which informant has agreed to be established only after marriage. It is her contention that Applicant had forcibly established

physical relationship with her for two years. She narrated incident dated 19.06.2023 wherein Applicant fetched her from her mothers home and assured her of marriage and from 19.06.2023 to 23.06.2023 they stayed together. It is alleged that Applicant has committed rape on her during this period and on 26.06.2023 he ran away by taking Rs. 1 lacs from her

3. Learned Counsel for the Applicant states that both Applicant and informant are major and relationship between them, if any, is consensual. Thus, according to him, offence of rape is not attributable against the Applicant.

4. Learned APP and learned Counsel for informant opposed the said submission mainly relying upon the medical examination of the informant, which indicates that number of injuries were seen on her person which shows physical violence caused to her, and which coupled with her statement indicates that it is a case of rape. They submit that if the bail is granted, then there is every likelihood of the Applicant pressurizing the informant, who is only lady without any support.

To this, learned Counsel for the Applicant, on

instructions, makes statement that he will not enter the jurisdiction of village Sugandhanagar, Tq. Mantha, Dist. Jalna till filing of the charge-sheet.

5. Perusal of record indicates that apart from FIR lodged on 27.06.2023 the informant had lodged complaint with police on 24.06.2023 in respect of incident occurred on 23.06.2023. It is stated by her in the said complaint that the family members of the Applicant had been to her place and they abused and assaulted her with fist and kick blows. If such incident has occurred then obviously it is reflected in the medical papers indicating causing of injuries to her. At this stage, it cannot be said that those injuries are attributable to the present Applicant as his name is not appearing in the complaint recorded on 24.06.2023, nor it can be held that those injuries were caused while establishing forcible physical relationship with her.

6. As far as the relationship between parties is concerned, though it is alleged that there is forcible physical relationship is established *prima facie* it is difficult to accept that for the period of two years

forcible relationship were maintained by the Applicant with informant without she complaining about it.

7. Having regard to these facts and circumstances of the case, there is reason to accept the contention of learned Counsel for the Applicant that this could be a case of consensual relationship. Hence, application is allowed by confirming order dated 07th August, 2023. Applicant to attend concerned police station once in fortnight and not to enter jurisdiction of village Sugandhanagar, Tq. Mantha, Dist. Jalna till filing of the charge-sheet.

(R.M. JOSHI, J.)

Malani