

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 900 OF 2023

Durgesh Pandurang Naik ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Gaurav M. Parkar, for Applicant.

Mrs. A. A. Takalkar, APP for State.

Mr. M. B. Mulla, PN, Nesari Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 29th NOVEMBER, 2023

PC:-

- 1) Heard the learned counsel for the applicant and the learned APP for the State.
- 2) This is an application for pre-arrest bail in connection with C.R. No. 12 of 2023, registered with Nesari police station, Kolhapur, for the offences punishable under Sections 376(2) (n) and 506 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant had known the wife of the applicant. Over a period of time, the first informant became acquainted with the applicant and his children. The first informant alleged that the applicant developed proximity with her and on 21st August, 2022 took her to a hotel at Gadhinglaj and had physical relations with her by going through a ritual of marriage. Subsequently also, the applicant allegedly had sexual intercourse with the first informant by threatening to kill her parents if she did not give in to his demand. Eventually, the first informant lodged the report.

4) When the application was listed before the Court on 27th March, 2023, this Court was persuaded to grant interim protection.

5) The learned counsel for the applicant submits that the relationship between the applicant and the first informant was consensual. Since the applicant and the first informant are residing in the same neighbourhood and the first informant had known that the applicant was already married, there was no question of giving consent to sexual intercourse under misconception of facts. Attention of the Court was invited to the transcript of the WhatsApp conversation between the applicant

and the first informant to bolster up the submission that the applicant and the first informant were in a relationship.

6) The learned Counsel for the applicant further submitted that the applicant had appeared before the Investigating Officer and co-operated with the investigation.

7) The learned APP submits that the applicant had appeared before the Investigating Officer, but he had not rendered desired co-operation. However, post-completion of the investigation, the charge-sheet was lodged on 13th June, 2023, reserving liberty to file a further report under Section 173 (8) of the Code of Criminal Procedure, 1973.

8) I have perused the allegations in the FIR. Prima facie, it appears that the applicant and the first informant being the residents of the same locality, had known each other from before. The first informant claimed to be a friend of the wife of the applicant.

9) In the backdrop of the nature of the accusation and especially the transcript of the Whatsapp conversation between the applicant and the first informant, prima facie, it appears that the applicant and the first informant were in a relationship and sexual intercourse was consensual. Since the relationship

appeared to have lasted over a period of time and there was an interval of time between various incidents of sexual exploitation, the question as to whether the consent of the first informant was vitiated on account of the threats allegedly administered by the applicant appears to be a matter for adjudication. Moreover, the investigation seems to be complete and the charge sheet has been lodged. At this length of time, custodial interrogation of the applicant does not seem to be warranted for further investigation. The applicant appears to have roots in society.

10) In the totality of the circumstances, since the interim protection has been in operation from 27th March, 2023, I am inclined to exercise the discretion in favour of the applicant.

11) Hence, the following order.

ORDER

I) In the event of arrest of the applicant in connection with C.R. No. 12 of 2023, registered with Nesari police station, Kolhapur, for the offences punishable under Sections 376(2) (n) and 506 of Indian Penal Code, 1860, the applicant be released on bail on executing a PR Bond in the sum of

Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall henceforth appear before the Investigating Officer, as and when directed.

III) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant, any of her relatives and any of the persons acquainted with the facts of the case.

IV) The applicant shall regularly attend the proceedings before the jurisdictional Court.

V) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

VI) The application stands disposed.

[N. J. JAMADAR, J.]