

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

ANTICIPATORY BAIL APPLICATION NO. 2366 OF 2022

Shrikant Appasaheb Deshmukh ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
INTERIM APPLICATION NO. 2984 OF 2022**

Nirmala Shivaji Yadav ..Applicant

In the matter between

Shrikant Appasaheb Deshmukh ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Sr. Adv. Mr. Shirish Gupte a/w. Mr. Ashish Gaikwad , Mr. Ujwal Agandsurve Ms. Anjali Kolapkar, Ms. Vijaya Shinde with Mr. Rajendra Khaire for the Applicant.

Mr. Sachin Padaye a/w. Purshottam Chavan for the Intervenor.

Mr. S.V.Gavand, APP for the State.

Sr.,P.I Mr. Kshirsagar, from Sadar Bazar Police Station present.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 16th MARCH, 2023.**

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No. 536 of 2022 registered with Sadar Bazaar Police Station, Solapur for offences under Sections 376, 377, 504, 506 of the Indian Penal Code.

2. Heard Shri Gupte, learned Counsel for the Applicant, learned APP for the State, and the learned Counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The aforesaid crime was registered pursuant to the FIR lodged by the victim. A perusal of the FIR reveals that the Applicant and the victim were known to each other since the year 2008. Since the year 2021 they had indulged in sexual relationship on several occasions and at different places. The records prima facie indicate that the relationship between the Applicant and the first informant, both adults, was consensual. Though the first informant has stated that the Applicant had physical relations with her under the pretext of marriage, the records reveal that the Applicant is a married man and this fact was known to the first informant. Hence, prima facie there is no material on record to indicate that the first informant/victim had sexual relationship with the Applicant under misconception of fact.

4. In ***Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra (2019) 18 SCC 191***, the Honourable Supreme Court has observed that

“ There is clear distinction between rape and consensual sex. The Court in such cases, must

very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could despite having every intention to do. Such cases must be treated differently. If it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC”.

5. In ***Naim Ahamed vs. State (NCT of Delhi), Criminal Appeal No. 227 of 2023***, the victim was a married woman having three children who had continued to have relationship with the Appellant for over five years. The Honourable Supreme Court, after considering the previous decisions reiterated that

“ there is difference between giving a false

promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the Court”.

6. As noted above, in the present case, the Applicant is a married man, and this fact was known to the first informant, despite which she continued to have sexual relationship with the Applicant. Such relationship which is purely consensual and was not vitiated by “misconception of fact” arising out of promise to marry. Hence, prima facie the offence under Section 375 is not made out.

7. Learned APP further submits that the investigation is completed in all aspects and that the presence of the Applicant is not required for

custodial interrogation. Under the circumstances, and in view of the discussion supra, in my considered view, this is a fit case for grant of pre-arrest bail. Hence the Order.

(i) In the event of arrest of the Applicant in Crime No. 536 of 2022 registered with Sadar Bazaar Police Station, Solapur, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two sureties in the like amount;

(ii) The Applicant shall report to the Investigating Officer if required by the Investigating Officer for the purpose of investigation and interrogation.

(iii) The Applicant shall not interfere with the Complainant or other witnesses in any manner, and shall not tamper with the evidence in any manner.

(iv) The Applicant shall keep the Investigating Officer informed of his current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

. Application stands disposed off.

. Interim Application stands disposed in view of disposal of the Anticipatory Bail Application.

(ANUJA PRABHUDESSAI, J.)