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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3340 OF 2022**

Prashant Popat Jadhav	... Applicant
Vs.	
1. State of Maharashtra	...
2. ABC (Victim)	... Respondents

Mr. Rahul K. Dhaygude for the Applicant.
Mr. H. J. Dedhia APP for Respondent No.1-State.
Mr. Harshad Sathe for Respondent No.2.

CORAM : S. M. MODAK, J.

DATED : 7TH FEBRUARY 2023

P.C:-

1. Heard learned Advocate for the Applicant and Respondent No.2-first informant and learned APP for Respondent No.1-State
2. This Court has already granted interim protection to the Applicant as per order dated 1st December 2022.
3. Learned Advocate for the Applicant after reading various averments in the FIR, submitted that custodial interrogation is not required and hence, interim protection needs to be confirmed. When the act of sexual intercourse under misconception will fall within purview of section 375, has been elaborated in case of ***Mahesh Balkrishna Dandane Vs. The State of Maharashtra***¹ and by the Hon'ble Supreme Court in case of ***Uday Vs. State of Karnataka***².

¹ 2015 ALL MR (Cri) 2805

² (2003) SCC (Cri.) 775

4. Learned Advocate for the Applicant took me through various particulars in the FIR and other circumstances thereby falsifying her version. The circumstances relied upon by the Applicant are as follows :

- (a) Lodging of non cognizable complaint by the first informant on 6/11/2022 under sections 323, 504, 506 of the Indian Penal Code against this Applicant (FIR is lodged belatedly).
- (b) In the incident which occurred on 6/11/2022, in fact, the Applicant is beaten and copy of MLC is at page 40.
- (c) The extract of bank statement ranging from 2021 upto 2022 thereby recording various entries about transfer of money by the Applicant in favour of victim and vice-versa.
- (d) The extract of duty register in respect of API Vibhute on 14/11/2021, 15/11/2021 and 16/11/2021 (It is same API which according to the first informant stayed in her house along with the Applicant on 15/11/2021). These entries falsifies her allegation about stay by said API Vibhute in her house.
- (e) Copy of email sent by the first informant-victim to the Applicant dated 26th April 2022, even not remotely suggest about allegation of sexual intercourse by the Applicant.

5. The Applicant claims that he has cooperated the police during interim protection. I-20 car sold by the victim to the Applicant is also produced before the police. An attempt is made to show that the first informant-victim is aware about the procedure of criminal law and in fact, she has also lodged complaint against her husband-Kaviraj Patil at Sangli police station.

6. The continuation of interim protection is opposed by learned APP as well as learned Advocate Mr. Sathe for the first informant.

7. Learned APP took me to various details in FIR and according to him she was sexually ravished under promise to perform marriage and in fact the victim has paid amount of Rs.3,50,000/- to the Applicant under pretext of investing it in sand auction.

8. Whereas according to learned Advocate Mr. Sathe for Respondent No.2-first informant, by no stretch of imagination the acts committed by the Applicant will fall within purview of consent as defined under section 90 of the Indian Penal Code. According to him, in fact the Applicant projected to victim that he is going to get divorce from his wife. According to him the Applicant took the first informant to Athithi lodge under pretext of visiting the house and he exploited her at midnight on 21/07/2021. According to him, similar is situation when incident of ravishing took place in the month of July 2021.

9. I have perused the averments in FIR very minutely. It is true that the first informant-victim is major and she is also married. The two incidents of sexual intercourse are alleged to have taken place on 21st June 2021 and in last week of July 2021. Whereas the FIR is lodged on 13/11/2022. This is not stage to give finding that the said incidents have taken place voluntarily i.e. by consent. It depends upon various circumstances. But there is matter of indication that after July 2021, on 15th November 2021, there is allegation that the Applicant resided with the complainant-victim (though disputed). We have to look to issue from the point of necessity of custodial interrogation.

10. It is true that there are financial transactions between the Applicant and the first informant. I am inclined to continue interim protection for the reason that after considering allegations, I do not find that case for custodial interrogation is made out. Wherever both the Applicant and victim have cohabited is matter of record. That material can be very well collected, even independently. It is also true the FIR is lodged on 13/11/2022, whereas last incident of sexual intercourse took place in July 2021. I am inclined to confirm interim protection subject to the conditions. Hence, the following order is passed :

O R D E R

- (i) Interim protection granted by this Court on 1st December 2022, is confirmed.
- (ii) The Applicant to give attendance to concerned police station on Wednesday from 10 am to 12 noon until filing of the charge-sheet.
- (iii) The Applicant shall not tamper with prosecution witnesses in any manner.
- (iv) If any of the aforesaid condition is breached, Anticipatory Bail granted by this order is liable to be cancelled.

11. Application is disposed of in aforesaid terms.

12. Parties to act on authenticated copy of this order.

(S. M. MODAK, J.)