

VRJ

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

ANTICIPATORY BAIL APPLICATION NO.259 OF 2023

Mangesh Anand Borate

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Ashish M. Varute i/by Mr. Pandit Kasar for the applicant.

Ms. Veera Shinde, APP for the respondent/State.

Mr. M.A. Mulik, PSI, Chikhali Police Station, Pimpri Chinchwad is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 28, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.633 of 2022 registered with Chikhali Police Station, Pimpri Chinchwad for offences punishable under sections 376(2)(n) and 506 of the Indian Penal Code, 1860, the applicant is seeking pre-arrest protection under section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution, the victim is a married woman having one child. In July 2018 the applicant initiated relationship with her and gained her confidence. The victim's husband is alcoholic. The applicant took advantage of it. He promised

marriage with the victim after divorce with her husband. By promising marriage in August 2018, the applicant and the victim had repeated sexual intercourse at different places. Ultimately, on refusal of the applicant to marry with victim, the victim filed a report.

3. The applicant's application under section 438 of the Criminal Procedure Code, 1973, has been rejected by the Sessions Judge on 22nd December 2022.

4. This Court by order dated 3rd February 2023, issued notice to the victim and protected the applicant from arrest.

5. The office remark dated 9th June 2023 shows respondent No.2 has been served. On 14th June 2023, the application was adjourned to accord last opportunity to the victim. However, today the victim has failed to appear either personally or through advocate.

6. On perusal of the record and other material on record, prima facie following factual scenario emerges: (i) The victim is married lady aged 25 years; (ii) Period of relationship between the applicant and the victim is from July 2018 till August 2022; (iii) Repeated incidents of sexual intercourse have occurred at different places such as house of the victim, a lodge, various rooms taken on rent by the victim's husband; and (iv) Refusal on the part of the applicant to perform marriage prompted registration of report.

7. Prima facie aforesaid factors indicate consensual relationship which needs to be adjudicated during the trial. However, for that purpose custodial interrogation of the applicant is not necessary,

Hence, following order:

- a) In the event of arrest of the applicant in connection with C.R. No.633 of 2022 registered with Chikhali Police Station, Pimpri Chinchwad for offences punishable under sections 376(2)(n) and 506 of the Indian Penal Code, 1860, the applicant shall be released on bail on furnishing PR. Bond in the sum of Rs.50,000/- along with one or two sureties in the like amount;
 - b) The applicant shall remain present before the investigating officer on 30th June, 3rd and 5th July 2023 between 11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;
 - c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
 - d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
8. The anticipatory bail application is disposed of in above terms.

(AMIT BORKAR, J.)