

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

ANTICIPATORY BAIL APPLICATION NO.689 OF 2023

Bharat Mahadev Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Mr. Prashant Gurav with Ms Pratibha Pawar for the Applicant.

Mr. R.M. Pethe, APP for Respondent -State.

Mr. Mangesh Shinde, PI, Wadala Police Station.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 8th MARCH, 2023.

P.C. :-

1. This is an application under Section 438 of Cr.P.C. filed by the Applicant for pre-arrest bail in Crime No.274 of 2022 registered at Wadala Police Station, for the offences punishable under Sections 376 and 506 of the IPC.

2. Learned counsel for the Applicant states that the relationship was consensual.

3. Per contra, learned APP states that the Applicant is a married man with a child and that the victim had entered into a relationship with the Applicant under misconception of facts.

4 I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR lodged by the victim. A perusal of the FIR reveals that since 2020 the first informant and the Applicant herein, both adults indulged in sexual relationship. It is on record that the first informant gave birth to a girl child and the DNA report shows that the Applicant herein is the biological father of the child. It is to be noted that the first informant /victim has stated that she had entered into sexual relationship with the Applicant only in view of the promise made by the Applicant to marry her. The FIR itself reveals that the first informant was well aware that the Applicant herein was married and that he was having children and his family is residing at village-Khamde. Since it was within the knowledge of the first informant that the Applicant was a married man, the contention of the first informant that she had indulged into sexual relationship under misconception of facts cannot be accepted.

6. As noted above, the Applicant and the first informant, both adults, have indulged in consensual sexual relationship. Hence, prima facie offence of rape as defined under Section 375 of the IPC is not made out. Considering the above facts and circumstances, this is a fit case for grant of pre-arrest bail. Hence, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.

274 of 2022 registered at Wadala Police Station, the Applicant shall be released on bail on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;

(ii) The Applicant shall report to the Investigating Officer for a period of four days from 13/03/2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the Investigating Officer;

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

7. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)