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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.916 OF 2023**

Oliver Cyril Pinto

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. P. R. Arjunwadkar i/b Ms. Prabha Badadare for the Applicant.

Mr. A. R. Kapadnis APP for the Respondent-State.

Mr. Sagar Kautkar, PSI, Kapurbawadi police station present.

CORAM : S. M. MODAK, J.

DATED : 13TH APRIL 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. There was a marriage fixed in between the first informant and present Applicant. It appears from the FIR that the Applicant has told the first informant that he serves as a pilot in Indigo Airlines. One Sherlyn Phillips works as Air Hostess in Indigo Airlines. Both know each other. The first informant is friend of said Sherlyn Phillips and through Sherlyn Phillips, the Applicant and the first informant acquainted with each other. They have started interacting with each other in July 2021 they fell in love with each other. Both

of them have decided to marry.

3. The engagement was performed on 30th April 2022. They have decided to have Court marriage. Even both have given notice as per provisions of the Special Marriage Act on 28th December 2022. Its copy is tendered across bar on behalf of the Applicant. However, the marriage could not be performed. The first informant contends that there are two reasons, one is that the Applicant likes intercourse in unnatural way and secondly, his relatives started demanding dowry.

4. The incident of unnatural intercourse took place first in July 2022, in house of the Applicant and on 22nd January 2023, in the car when both of them have gone to Yeoor, Thane. As the first informant realised that marriage was not possible, she had chosen to file the complaint on 21/02/2023 with Kapurbawadi police station and offence is registered under sections 377, 420, 504, 506(2) read with 34 of IPC.

5. In all there are three accused. The present Applicant is accused No.1, whereas accused Nos.2 and 3 are relatives of the Applicant and they have been granted anticipatory bail by the Court of Sessions, Thane.

6. Learned Advocate for the Applicant vehemently submitted that the alleged incident of unnatural intercourse has firstly taken place in July 2022, whereas the FIR is lodged on 21st February 2023. He invited my attention to notice of the Special Marriage given on 28th December 2022. He wants to suggest that inspite of the first incident, the first informant was ready to go with marriage proposal.

7. He submitted that the first informant is working as an anchor and writer, whereas the Applicant works as pilot. He relied upon a receipt from one jeweller wherein the Applicant has purchased certain ornaments. There are certain photocopies relied upon by the applicant of What'sApp messages between the Applicant and the first informant. My attention is drawn to those What'sApp messages. In none of these messages, it is suggested that the Applicant is involved into unnatural intercourse.

8. It is also submitted that this FIR is lodged as counter blast to filing of non-cognizable complaint by the Applicant with the same police station on 11th February 2023. It is registered under section 323, 504 and 506 of IPC. The first informant had slapped the Applicant. According to him, even if it is presumed that these allegations are correct without proving them, the custodial

interrogation is not required.

9. Whereas learned APP submitted that the allegations of unnatural intercourse are well founded and there are supporting materials in form of statement of witnesses, whose names are disclosed in the What'sApp messages. They are friends of the first informant. First informant disclosed to them about those acts. The second material is What'sApp message and photographs exchanged between the first informant and the Applicant. I have seen them. The said photographs are of private parts and the messages exchanged. Even I have permitted learned APP to show the photographs and messages to learned Advocate for the Applicant.

10. At the stage of granting anticipatory bail, the Court has to see that the allegations are prima facie disclosed and whether custodial interrogation is required. If there are certain lacuna in the material that cannot be seen at this stage.

11. Learned Advocate for the Applicant tried to argue that it is choice of the parties to decide manner in which they can have intercourse with each other. To certain extent he may be correct. But the law of nature as well as law of land makes certain acts of intercourse which are against nature, as an offence and it is under

section 377 of IPC. It is true that those messages which are sent by both of them, they have expressed their views about manner of intercourse.

12. It is very well true that if one of the parties to intercourse subsequently dislikes it, he or she has every right to take recourse of law, which is available. In view of that if the complaint is filed at subsequent stage, she cannot be stopped from lodging the complaint. And whether the first informant at the beginning has consented or not can be decided at the time of trial and not now.

13. Hon'ble Supreme Court in case of *Navtej Singh Johar v/s Union of India*¹ has observed that :

“any act of the description covered under Section 377 IPC done between the individuals without the consent of any one of them would invite penal liability under Section 377 IPC”.

(para no. 267)

So prima facie I am convinced that the allegations do warrant application of section 377 of IPC.

1 (2018) 10 SCC 1

14. So far as custodial interrogation is concerned, there are WhatsApp messages which consists of photos and messages. So some mobile ought to have been used for that. The mobile handset of the first informant can be secured very easily but when the question of mobile handset of the Applicant is concerned, he may show inclination to produce it. However, this is not only case of seizure of mobile of the Applicant, the police certainly has got right to interrogate the Applicant, so far as every aspect of that unnatural intercourse is concerned. So I think custodial interrogation is required. No case for anticipatory bail is made out. The Application is rejected.

15. These are my prima facie observations and the trial Court may not be influenced by that.

16. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]