

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

ANTICIPATORY BAIL APPLICATION NO. 1931 OF 2023

Sachin Vasant Gade

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Aniket Ujwal Nikam a/w. Amit Icham for the Applicant.

Mr. R.M.Pethe, APP for the State.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 13th JULY, 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.321 of 2023 registered with Pandharpur City Police Station for offences under Section 376, 506 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant, learned APP for the State. 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 prosecutrix. A perusal of the FIR reveals that the prosecutrix is a married woman having two children. She claims that her marriage was solemnized in the year 2010 and that she is residing at her parental

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home because of matrimonial dispute. The FIR further reveals that the Applicant was known to the first informant. She claims that the Applicant had agreed to bear her household expenses. She has alleged that the Applicant had sexual relationship several times. Though the first informant claims that the Applicant had sexual relationship under the threat of causing harm to her children. She also states that the Applicant had forcible sexual relationship with her under the pretext of marriage.

4. The prosecutrix is a married woman, and her marriage is still subsisting. Hence, there was no question of having sexual relationship with the Applicant in view of promise of marriage or under misconception of facts. The records prima facie reveal that the Applicant and the first informant, both adults, have indulged in consensual sexual relationship, which does not prima facie constitute rape within the meaning of Section 375 of the Indian Penal Code. Hence, this is a fit case to exercise discretion under Section 438 of Cr.P.C.

5. Under the circumstances, application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.21 of 2023 registered with Pandharpur City Police Station, 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 for two days on 17th and 18th July, 2023, between 11.00 a.m. to 2.00 p.m. and further as and when required by the Investigating Officer.

(iii) 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.

(iv) The Applicant shall not interfere with the prosecutrix or her family members, or the other witnesses, or tamper with the evidence in any manner.

. **Application stands disposed of.**

(ANUJA PRABHUDESSAI, J.)