

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.1958 OF 2023
WITH
INTERIM APPLICATION NO.2580 OF 2023**

Anand Sheshmani Mishra	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Sushil Upadhyay, for the Applicant
Mr. Shrikant Yadav, APP, for the Respondent/State.
Mr. U.L. Singh, for the Intervener.
Ms. Rohini Doke, PSI, Manikpur police station.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 11, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 483 of 2022 registered at Manikpur police station for the offence punishable under section 376(2)(n) of Indian penal Code, 1860.
3. By an order dated 20th July, 2023 this Court was persuaded to grant interim bail by observing inter alia as under:-

3] There is contention raised on behalf of the Applicant that the First-Informant in fact has married earlier but it was not disclosed to the Applicant. He claims that the relationship was consensual. My attention is invited to the blank cheque on Page No.30 and Page No.54 i.e. photograph of the husband of the First-Informant. According to the Applicant's Counsel, this fact was concealed from him and when he came to

know this fact, he has denied to marry with her.

4] These allegations are denied on behalf of the First-Informant. It is contended that the Applicant was very much aware and he used to stay in the house along with the First-Informant. It is contended that there was abortion on more than one occasion and Applicant wants to place those documents on record along with medical case papers belonging to the Applicant. It is contended that these documents are also handed over to the Police but as Investigating Officer is not there, this fact could not be confirmed.

4. The applicant has appeared before the investigating officer as directed.

5. I have heard the learned counsel for the applicant, learned APP and learned counsel for the intervener/applicant in IA No. 2580 of 2023.

6. The first informant/intervener lodged report with the allegations that she became acquainted with the applicant in the month of November, 2017. Proximity developed. In the year 2018, the applicant allegedly took the first informant to a hotel and had forcible sexual intercourse without her consent. In the month of January, 2021, the applicant started to reside with the first informant in her room. Representing that they were too marry soon the applicant had sexual intercourse on multiple occasions. In the month of October, 2022 the applicant allegedly declined to solemnize marriage with the first informant, as promised. Hence, the report.

7. The learned counsel for the applicant submitted that the first informant and the applicant were in a relationship for a number of years. In fact, the applicant and the first informant, as is evident from the allegations in the first information report, were living under one roof. The first informant had, however, suppressed the fact that she was already married and had a child by her first husband. Attention of the Court was invited to the copy of the cheque leaf wherein the first informant had identified herself as the wife of Kisan Dube. It was submitted that the applicant was ready to solemnize the marriage with the applicant but the said discovery drove them apart.

8. The learned APP and the learned counsel for the first informant resisted the prayer for pre-arrest bail. It was submitted that the applicant had all along known that the first informant was a married lady and yet induced her to maintain physical relations by making a false promise of marriage. An endeavour was made to draw home the point that the applicant had made the first informant to abort a fetus.

9. I have carefully considered the allegations in the first information report. Evidently, the first information report is conspicuously silent about the applicant having forced the first informant to abort the fetus. The copies of USG report do not

advance the cause of the submission on behalf of the first informant.

10. Prima facie, it appears that the applicant and the first informant were in a relationship since the year 2017. The first alleged sexual exploitation was in the year 2018. Physical relations continued till the year 2022. In fact, the applicant and the first informant were living together under one roof for some time.

11. It is imperative to note that during the course of submission, the learned counsel for the first informant did not endeavour to controvert the contention on behalf of the applicant that the first informant was already married. It was submitted that the first informant had been estranged from her husband and this fact was known to the applicant. Again the first information report does not give any indication about the previous marriage of the first informant. In a situation of this nature, prima facie it would be rather difficult to readily believe that the first informant who was already married could believe the representation that the applicant would solemnize marriage with her, and, on that strength, gave consent for the physical relations.

12. Prima facie, it appears that the sexual intercourse was consensual. The first informant and the applicant turned astray over the alleged discovery of the marital status of the first

informant. In the circumstances, it would be difficult to draw an inference that the consent given by the first informant was vitiated on account of misconception.

13. In the aforesaid view of the matter, I am impelled to make the order of interim bail absolute on the terms and conditions incorporated therein.

14. The applicant shall henceforth appear before the investigating officer as and when directed.

15. The applicant shall regularly attend the proceedings before the jurisdictional Court.

16. The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

17. Application disposed.

18. In view of disposal of the application, Interim Application No. 2580 of 2023 also stands disposed.

19. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)