

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

BAIL APPLICATION NO. 2042 OF 2023

Suyog Sunil Pathak

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Kishore Patil a/w. Mr. Amar Gharte, Mr. Rahul Raut,
Mr. Jitendra Chinchambdor and Ms. Aishwarya Dangle
for the Applicant.

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

Mr. Chavan, PI i/b. Mr. Gaonkar, PSI, Amboli Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 03rd AUGUST, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is arrested in C.R.No.347/2023 registered with Amboli Police Station, Mumbai for offences punishable under sections 323, 376(2)(n), 420, 504, 506 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and 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 first informant. The facts narrated in the FIR prima facie reveal that the Applicant and the first informant were known to each other. The

FIR itself indicates that they were living together. The prosecutrix claims that the Applicant had assured that he would marry her. She claims that it was only on this assurance that she had established physical relationship with the Applicant.

4. The Applicant as well as the first informant both indulged in consensual sexual relationship. Hence, offence of 'rape' within the meaning of section 375 of IPC is prima facie not made out. The mere fact that the Applicant had subsequently refused to marry her, would not convert consensual relationship into an offence of rape under section 375 of the Indian Penal Code. Reliance is placed on the judgment of the Hon'ble Apex Court in ***Sonu alias Subhash Kumar v/s. State of Uttar Pradesh and anr. AIR 2021 SC 1405.***

5. Having considered the above facts and circumstances, in my considered view, this is a fit case to exercise discretion under section 439 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant – Suyog Sunil Pathak who is arrested in C.R.No.347/2023 registered with Amboli Police Station, Mumbai, is ordered to be released on bail on furnishing P.R. bonds in the sum of Rs.30,000/- with one or two solvent

sureties in the like amount ;

- (ii) The Applicant shall report to the Investigating Officer of Amboli Police Station, Mumbai as and when required ;
- (iii) The Applicant shall not interfere with the first informant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

6. Bail Application stands disposed of in above terms.

PREETI
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JAYANI

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by PREETI
HEERO JAYANI
Date: 2023.08.08
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(SMT. ANUJA PRABHUDESSAI, J.)