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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2097 OF 2023

Suman Raj Parimal

...Applicant

vs.

State of Maharashtra

...Respondent

....

Dr. Samarth Shrikant Karmarkar a/w Mr. Jonathan D'sylva, Ms. Priti Rita i/b. Karmarkar & Associates for the Applicant.

Ms. A. A. Takalkar, APP for the Respondent-State.

....

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 27 JULY 2023

P.C. :

1. This is an Application under section 438 of Criminal Procedure Code, 1973 (Cr.P.C.) filed by the aforesaid Applicant apprehending his arrest in Crime No.370 of 2023 registered at Khar police station, Brihanmumbai, for the offence punishable under sections 376(2)(n) of the Indian Penal Code, 1860.

2. Heard Dr. Samarth Shrikant Karmarkar, learned counsel for the Applicant and Ms. A.A. Takalkar, APP for the Respondent-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. The perusal of the facts narrated in FIR *prima facie* reveal that the Applicant and the prosecutrix were well known to each other. The statement of the prosecutrix on record *prima facie* indicates that the relationship between the Applicant and the prosecutrix, both adults, was consensual. Such consensual sexual relationship between the Applicant and the prosecutrix does not constitute offence of 'rape' within the meaning of section 375 of the Indian Penal Code, 1860. The FIR has been lodged only because the Applicant ignored the prosecutrix and refused to marry her.

4. Considering the facts and circumstances of the case, this is a fit case to exercise discretion under section 438 of the Cr.P.C. Hence, the Application is allowed on the following terms and conditions;

- (i) In the event of arrest of the Applicant in Crime No.370 of 2023 registered at Khar police station, Brihanmumbai, the Applicant shall be released on bail on furnishing PR bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount;

- (ii) The Applicant shall report to the Investigating Officer for two days on 1st and 2nd August, 2023 between 11.00 am to 2.00 pm;
- (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 complainant and the other witnesses, or tamper with the evidence in any manner.

5. The Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)