

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

ANTICIPATORY BAIL APPLICATION NO.2272 OF 2023

Faizan Anwar Noman Maqbol
Ahmed Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Mateen Shaikh with Ms Muskan Shailesh for the Applicant.

Mr. S.V. Gavand, APP for Respondent -State.

Mr. Vikram Bansode, PSI, Tilak Nagar Police Station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 11th AUGUST, 2023.

P.C.:-

1. The Applicant seeks pre-arrest bail in C.R. No.497 of 2023 registered with Tilak Nagar Police Station, Mumbai, for the offences punishable under Sections 376, 376(2)(n), 328, 354-A(2), 506 and 509 of the IPC.

2. Heard Mr. Mateen Shaikh, learned counsel for the Applicant and Mr. S.V. Gavand, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

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3. The facts narrated in the FIR dated 06/07/2023 prima facie indicate that the Applicant and the prosecutrix were known to each other. The prosecutrix claims that in the month of January-2023 the Applicant gave her some drink laced with some intoxicant and took her to a hotel and had forcible sexual intercourse with her. She has alleged that he had recorded the sexual act in his mobile phone. The FIR further reveals that the Applicant and the First Informant got married on 15/02/2023. The First Informant claims that the brother of the Applicant had shown to her the obscene photographs taken by the Applicant. She claims that when she informed the father of the Applicant about the incident, he told her that the Applicant had married her only to avoid rape charges.

4. The records reveal that the First Informant has lodged missing report dated 07/05/2023 stating that the Applicant herein had gone missing. The statement of the Applicant was recorded wherein he had stated that after having married the First Informant, he had realised that she was already married and that he did not wish to continue the relationship with her. This statement, which was recorded much prior to the FIR lodged by the prosecutrix, prima facie reveals that the allegations of rape have been made because the Applicant has refused to continue his relationship with the prosecutrix.

5. Considering the above facts and circumstances, prima facie offence of 'rape' within the meaning of Section 375 of the IPC is not made out. Hence, this is a fit case to exercise discretion under Section 438 of the Cr.P.C.

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

- (i) In the event of arrest of the Applicant in C.R. No.497 of 2023 registered with Tilak Nagar Police Station, Mumbai, he is ordered to be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties to the like amount.
- (ii) The Applicant shall report to the concerned Investigating Officer for a period of two days i.e. on 16/08/2023 and 17/08/2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when required by the Investigating Officer for the purpose of investigation;
- (iii) The Applicant shall not tamper with the prosecution evidence and or influence the witnesses in any manner;
- (iv) The Applicant shall keep the Investigating Officer

informed of his current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

7. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)