



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2380 OF 2023**

Chetan Maruti Ghadage	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Ms. Sana Khan with Mr. Aditya Parmar for Applicant.
Mrs. A.A.Takalkar, APP for State.
Mr. R.R.Patil, PSI Chatushrungi Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 28 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.447 of 2022 registered with Chatushrungi Police Station for the offences punishable under Section 376, 376(2)(n) and 417 of the Indian Penal Code.
3. The first informant became acquainted with the applicant on face-book. Acquaintance developed into friendship. The first informant alleged that the applicant relentlessly persuaded her and gave repeated assurances of marriage. Despite the resistance of the first informant, the Applicant had forcible sexual intercourse with the first informant without her consent by repetitively assuring her that he would solemnize marriage with her.
4. The first informant further alleged that to instill confidence in her, the

Applicant took her to his home and introduced her to his mother. The applicant's mother assured to come to her home and performed a religious rituals. The Applicant placed vermilion powder 'sindur' on her forehead. The applicant thereby made her believe that their marriage was settled. The Applicant during the period 8 September 2021 to 6 November 2021 again subjected the first informant to sexual exploitation repetitively by giving promise of marriage. Eventually, the applicant started to distance himself from the first information. When confronted, the applicant told the first information that he was looking for a rich girl, and he had simply exploited her. The first informant should, if required, take a sum of Rs.50,000/- from the applicant and should not insist for the marriage, lest the applicant would not think twice before eliminating her.

5. The first informant, however, pursued the applicant for marriage till August 2022. As the applicant refused to take her calls, frustrated the first informant attempted to commit suicide and eventually lodged the report.

6. The learned Counsel for the Applicant would urge that there is a delay of more than a year in lodging the FIR. Secondly, the allegations in the FIR would indicate that the applicant had been in a relationship with the first informant for long. In fact, they were in a live in relationship. However, as they grew apart, the relationship could to be taken further. It was submitted that the applicant had a bonafide and genuine desire to solemnize the marriage with the first informant. On

account of the fact that the applicant could not fulfill the promise to marry, the applicant cannot be prosecuted for the offence of rape, when the relations were consensual, urged Ms. Khan.

7. In opposition to this, the learned APP would submit that the allegations indicate that since inception the Applicant had no intention to solemnize the marriage with the first informant. The first informant has categorically asserted that the applicant had forcible sexual intercourse with her without her consent. The conduct of the applicant in taking the first informant to his house and introducing her to her family members to instill confidence and further exploit her, and, thereafter, resile from the promise, can only demonstrate that the applicant never intended to solemnize the marriage.

8. It is true, there is a delay in lodging the FIR. However the matter cannot be looked from from the point of view of delay alone. The first informant has alleged in the FIR that she had been insisting upon the applicant to solemnize marriage as promised. The allegations in the FIR further indicate that the applicant allegedly threatened the first informant when she pursued him for marriage. The first informant alleged that the applicant offered to pay some amount to her and threatened with dire consequences if she pursued him.

9. What is of material significance is the fact that the first informant categorically asserted that the applicant had pursued her since long and repeatedly

gave assurances of marriage and had forcible sexual intercourse without her consent, even on the first occasion. The prosecutorix has further alleged that after the first act, the applicant made her to believe that the marriage between them was a certainty took her to his house to perform rituals to made her to believe that the applicant would solemnize marriage with her. Thereafter, the applicant again sexually exploit her.

10. I am conscious of the fact that the first informant is a grown up lady. She appears to be well-educated. Indeed there is a clear distinction between rape and consensual sex between two consulting adults. In the case of **Dhruvaram Murlidhar Sonar V/s. State of Maharashtra**¹ the Supreme Court expounded the distinction between rape and consensual sex as under :

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it

1 (2019) 18 SCC 191

is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

11. The complicity of a man in a situation of this nature essentially turns on the intent as is evident from the attendant facts and circumstances. If it could be shown that the man had no intent to solemnize marriage and a promise was made with the sole intent to indulge in the sexual intercourse, a charge of rape can be sustained as it would be a case of giving a consent on account of misconception of fact.

12. In the case of **Anurag Soni V/s. State of Chhatisgarh**² the Supreme Court, after adverting to the previous pronouncements enunciated the law as under :

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.”

13. In the instant case, though Ms. Khan made an endeavour to draw home the point that the applicant had bona fide and genuine desire to solemnize marriage with the first informant, the same is not reflected in either the attendant circumstances

² (2019) 13 SCC 1

or even by the averments in the application. There is no prima facie material to show that either on account of the unforeseen circumstances or events which were beyond the control of the applicant or for any other reason, the applicant could not solemnize the marriage. Prima facie, it does not appear that the applicant had bonafide intent to marry the first informant and the subsequent events made it impossible to solemnize the marriage. The allegations of threatening the first informant and asking her to back off by accepting a sum of Rs.50,000/- are required to be seen through the aforesaid prism.

14. In the totality of the circumstances, custodial interrogation of the applicant seems warranted to facilitate further investigation. I am, therefore, not inclined to exercise discretion in favour of the Applicant.

15. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) It is clarified that these prima facie observations are confined to determine the prayer for entitlement for pre-arrest bail only.

(N.J.JAMADAR, J.)

