



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

BAIL APPLICATION NO. 3093 OF 2023

ANANTHU MURLIDHARAN NAIR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 3900 OF 2023**

XYZ ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Amit Date a/w Adv. Rukmini Khairnar for the Applicant.
Adv. S.S. Panchpor i/b Adv. Ashwin A. Borhade for the
Intervener.
Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 31, 2023

P.C. :

1. Heard learned counsel for the applicant, learned counsel for the intervener and learned APP for the State.
2. This is an application for bail in respect of the offence punishable under Sections 376(2)(n) and 419 of the Indian Penal Code (hereafter 'IPC' for short) registered on

22/12/2022 vide C.R. No.1121 of 2022 with Kurar Police Station, Mumbai.

3. During the period from 2017-2018, the applicant was a tenant in a property which the prosecutrix and her husband rented out. After a period of time, the applicant and the prosecutrix came close to each other. It is the case of the prosecutrix that on the false promise of marriage, the applicant had physical relations with her. The prosecutrix came to know that the applicant had married on 17/05/2019. The relations of the applicant with the prosecutrix continued even thereafter as the applicant promised her that he would divorce his wife and marry the prosecutrix. It is the case of the prosecutrix that after her husband came to know about the relationship she had with the present applicant, her husband left her and started residing separately. It is then alleged that without informing the prosecutrix the applicant left for Canada on 30/04/2022. The prosecutrix realised that she had been cheated and that the applicant had physical relations with her on the false promise of marriage.

4. Learned APP and learned counsel for the intervener opposed the application. It is submitted that this is the case where the applicant on the false promise of marriage has induced the prosecutrix to enter into physical relations with her. It is submitted that the conduct of the applicant of breaching the prosecutrix's faith that the applicant will marry her and going to Canada without informing her does not entitle the applicant to any relief from this Court.

5. During the pendency of the application, the charge-sheet has been filed. Learned APP tenders a copy of the charge-sheet and the same has been taken on record. The FIR was lodged on 22/12/2022 and the applicant was arrested on 16/09/2023. *Prima facie*, the relationship appears to be consensual in nature. A reference is necessary to the decision of the Hon'ble Supreme Court in the case of Pramod Suryabhan Pawar Vs. The State of Maharashtra and Anr.¹. In the present facts whether the "misconception of fact" alleged by the prosecutrix is the applicant's promise to marry her will undoubtedly be tested at the appropriate stage. The passport of the applicant is

1 2019 SCC OnLine SC 1073

with the investigating officer. In the facts and circumstances of the present case, further custody of the applicant is not necessary, since the investigation is complete. The applicant will face the consequences post-trial if found guilty. The applicant can be enlarged on bail by imposing certain conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Ananthu Murlidharan Nair in connection with C.R. No.1121 of 2022 registered with Kurar Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Kurar police station once in three months, every first Monday of the concerned month, between 10.00 a.m. and 12.00 noon, commencing December 2023.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) The applicant shall not contact or intimidate or threaten the victim.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) Except for the purpose of reporting to the Investigating Officer, the applicant shall not enter the jurisdiction of Kurar police station after being released on bail, till the trial concludes.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(i) The applicant shall surrender his passport, if any, to the investigating officer.

(j) The applicant shall not leave India without the permission of the trial Court.

(k) If any of the conditions are breached, the same shall follow the consequences of cancellation of this bail granted.

6. The bail application is disposed of. The interim application also stands disposed of.

(M. S. KARNIK, J.)