



Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 2881 OF 2023

Vishal Machindra Pawale	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Shailesh Chavan, a/w Vishal Khataavkar, for the Applicant.
Smt. Ashwini Takalkar, APP for the State.
PSI Y. D. Jadhav, Paud Police Station, Pune Rural, present.

CORAM: N. J. JAMADAR, J.
DATED : 16th OCTOBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.346 of 2023, registered with Paud Police Station, Pune Rural, for an offence punishable under Section 376 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant is the resident of Mulshi, Pune. She has a son and daughter. She is a tailor by profession.
4. In the year 2020, the first informant got acquainted with the applicant, who met her in Sunshine Mall, Pirangut. Proximity developed. The first informant and the applicant had consensual sexual relations. Later on, the first informant

declined to continue relationship, as she feared that it may jeopardise her marital life.

5. The first informant alleges that on 17th August, 2023 the applicant forcibly took her to the bathroom of Sunshine Mall and had forcible sexual intercourse without her consent. Hence the report.

6. Mr. Chavan, the learned Counsel for the applicant, submitted that as per the allegations in the FIR, it becomes evident that relations between the applicant and first informant were consensual. Attention of the Court was invited to the conversations on WhatsApp which indicate that there were financial transactions between the parties as well.

7. The learned APP submitted that in the intervening period after lodging of the FIR a non-cognizable complaint has been lodged against the applicant. In the event, the Court grants pre-arrest bail, appropriate conditions be imposed on the applicant, submitted the learned APP.

8. I have carefully perused the allegations in the FIR. I find substance in the submissions of Mr. Chavan that the very allegations in the FIR indicate that the relations between the parties were consensual. The first informant is a married lady having two children; a daughter and son. It appears that the

first informant had relationship outside marriage. The initial physical relations between the parties were stated to be consensual. The indictment against the applicant is that on 17th August, 2023 the applicant forced himself upon the first informant in a bathroom at the Sunshine Mall. In the light of apparent consensual relationship, the allegation of forcible sexual intercourse at a public place has to surmount the challenge of being inherently improbable.

9. *Prima facie* the relationship between the parties appears to be consensual and it seems that after the parties turned astray the allegations of an offence punishable under Section 376 have been made. I am, therefore, inclined to exercise the discretion in favour of the applicant.

10. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.346 of 2023, registered with Paud Police Station, Pune Rural, the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

- (ii) The applicant shall cooperate with the investigation and attend Paud Police Station on 25th, 26th and 27th October, 2023 in between 10.00 am. to 1.00 pm.
- (iii) The applicant shall make himself available for the medical examination, if directed.
- (iv) The applicant shall not visit the limits of the Paud Police Station for a period of six months from today.
- (v) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]