

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2936 OF 2023
WITH
INTERIM APPLICATION NO.4097 OF 2023

Imran Esa Khan ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Gaurav Bhawanani i/b. Abdul Khan, for the Applicant
Mr. S.H. Yadav, APP, for the Respondent/State.
Mr. Imran Shaikh a/w. Mr. Ruby Shaikh, Mr. Faraz Khan and Mr.
Morgan Mendonca, for Respondent No. 2.
Mr. Shaikh Zakiya Imran, the Complainant present.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 14, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The learned counsel for respondent No. 2 seeks leave to tender an affidavit of respondent No. 2.
3. Leave granted.
4. Affidavit of respondent No. 2 is taken on record.
5. Respondent No. 2 is present in Court. She admits the contents of the affidavit. She submits that she has filed the affidavit on her own volition and there is no coercion or duress.
6. On 26th October, 2023 this Court was persuaded to grant interim bail observing inter alia as under:-

3] The applicant is the friend of brother in law of the first informant. The husband of the first informant passed away in May 2022. The first informant alleges that taking undue advantage of the emotional weakness of the first informant, the applicant developed relationship with her by making promise of marriage after obtaining divorce from his wife. The applicant allegedly had forcible physical relations with the first informant. The first informant was allegedly coerced to give consent to the sexual acts by giving threat of making the conversation between the first informant and the applicant and the videos of the objectionable acts, viral. The first informant further alleges that the applicant had induced her to advance money by taking the amounts from relatives. She had in all paid a sum of Rs.22,50,000/- to the applicant. The allegations are also made against the in-laws of the first informant for subjecting her to cruelty.

... ..

7] From the perusal of the allegations in the FIR, it appears that the proximity developed between the first informant and the applicant, after the death of

the husband of the first informant. Having regard to the situation in life of the first informant, prima facie, it seems debatable whether the first informant had given consent for the sexual intercourse under misconception of facts. I am, therefore, inclined to exercise the discretion in favour of the applicant, while directing him to join in the investigation.

7. The respondent No. 2 affirmed that she had lodged report against the applicant on account of misunderstanding and dispute which arose between the respondent No. 2 and the relatives of her deceased husband.

8. In any event, for the reasons which weighed with this Court in granting interim bail, particularly the aspect as to whether the consent of the first informant for the sexual intercourse can be said to have been obtained by misconception of facts, being debatable, I am, impelled to make the order of interim bail absolute.

9. The order of interim bail dated 26th October, 2023 is made absolute on the terms and conditions incorporated therein.

10. In addition, the applicant shall regularly attend the proceedings before the jurisdictional Court.

11. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)