



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3546 OF 2023**

Somnath Nilu Londhe ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.3572 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3546 OF 2023

Divya Dipak Ughade ... Applicant/Intervener
and
Somnath Nilu Londhe ... Applicant
versus
The State of Maharashtra ... Respondent
Mr. Rohit Patwardhan for Applicant (through VC).
Mr. Gautam Pyarelal, for Intervener (through VC).
Mr. A.S.Gawai, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 24 OCTOBER 2024

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.766 of 2023 registered with Karmala Police Station for the offences punishable under Sections 376, 376(2)(n), 366, 504 and 506 of the Indian Penal Code.
3. The applicant and the first informant are the residents of the same locality. Intimacy developed. The applicant and the first informant were in a relationship for about 1 and half years. On 27 August 2023, at about 1.30 a.m., the applicant took the first informant to Alandi. The applicant allegedly

had a sexual intercourse with the first informant without her consent. As the father of the first informant lodged a missing report with Karmala Police Station, the applicant took the first informant to Kem Police Post. The applicant exerted pressure on the first informant. Hence, the first informant did not make any grievance against the applicant before the police. The applicant, however, refused to solemnize marriage with the first informant. Thereupon, a report came to be lodged.

4. On 20 December 2023, this Court was persuaded to grant interim pre-arrest bail to the applicant observing, inter alia, as under :

“7.I have perused the allegations in the FIR. The first informant alleges that the applicant stays near her house. In the circumstances, prima facie, it cannot be alleged that the first informant was unaware of the marital status of the applicant. It also appears that the first informant and the applicant were in a relationship for over one and half years. Initially, when the first informant appeared before the police, but no grievance was made.

8. In the circumstances, a prima facie case is made out in favour of the applicant. I am, therefore, inclined to grant interim protection by directing the applicant to join in the investigation and also implead the first informant as a party respondent to this application.”

5. Learned Counsel for the Applicant submitted that, pursuant to the aforesaid order, the applicant has appeared before the Investigating Officer and rendered requisite co-operation. The material on record would indicate

that the first informant was then 21 years of age, left the home on her own and eloped with the applicant. As the relationship turned sour, FIR came to be lodged.

6. Learned APP and the learned Counsel for Respondent No.2 resisted the prayer for pre-arrest bail. It was submitted that the first informant gave consent for the sexual intercourse on account of promise of marriage repetitively given by the applicant. Therefore, the applicant does not deserve the relief of pre-arrest bail. Learned Counsel for the first informant further submitted that the applicant had threatened the witnesses. Therefore, there is a strong possibility of tampering with evidence and threatening the witnesses in the event the order of pre-arrest bail is made absolute.

7. I have perused the material on record. Prima facie, it appears that the first informant had known that the applicant was already married. The live-in-relationship agreement, sought to be relied upon by the first informant, indicates that the first informant was aware that the marriage with the applicant was not possible, and, therefore, they entered into an agreement of live-in-relationship. Having regard to the attendant circumstances, the age of the first informant and the contemporaneous record, prima facie, it appears debatable whether the consent of the first informant for sexual intercourse was given under misconception of facts. Moreover, the fact that the first informant did not make any grievance against the applicant when she first

approached Kem Police Post, makes out a strong prima facie case in favour of the applicant.

8. In the aforesaid view of the matter, at this length of time, the custodial interrogation of the applicant does not seem warranted. The apprehension on the part of the prosecution and the first informant can be taken care of by imposing conditions.

9. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The order dated 20 December 2023 granting interim bail to the applicant is made absolute on the terms and conditions incorporated therein.

(iii) In addition, the applicant shall not contact the first informant, any of the witnesses or any of her relatives for any purpose whatsoever. 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.

(iv) The applicant shall mark his presence at Karmala Police Station on first Monday of every alternate month between 10.00 a.m. to 12.00 noon for a period of three years or tiil the conclusion of the trial, whichever is earlier.

(v) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

(vii) Interim Application No.3572 of 2024 also stands disposed.

(N.J.JAMADAR, J.)