

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

ANTICIPATORY BAIL APPLICATION NO. 372 OF 2024

Sakib Salim Mansoori @ Kabir

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Vishal Deshmukh i/b. Avdhut S. Hingne a/w. Anil Panjol for Applicant.

Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

Mr. R. V. Gupta for the first informant.

CORAM : SARANG V. KOTWAL, J.

DATE : 8 FEBRUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 730 of 2023, registered at Varsova Police Station, Mumbai, on 15.12.2023, under sections 376, 376(2)(n) and 313 of the Indian Penal Code.

2. Heard , learned counsel for the applicant and , learned APP for the State.

3. The F.I.R. is lodged by the victim herself. She has stated that, in the year 2020 she got acquainted with the present applicant as he was also residing in the same building. Their friendship developed into love affair. The applicant told the victim

that, he wanted to marry her. The informant, at that time, had clearly told him that, she belonged to different religion and, therefore, the marriage was not possible. But, in spite of that, their friendship turned into love affair. The F.I.R. mentions that, since June 2020, they started residing together. Her contention is that, initially she was reluctant to have physical relations, but in spite of her reluctance, they had their physical relations. It continued for quite some time. In 2021, she became pregnant. After that the disputes arose between them. It is her case that the applicant was staying with her till 18.11.2023. Thereafter, he left that room. The informant came to know on 21.11.2023 that the applicant had got married. Therefore, she realized that, she was cheated. Thereafter she lodged this F.I.R.

4. Learned counsel for the applicant submitted that the applicant and the informant had consensual relationship. It was going on for more than three years. The informant was aware that, their marriage was difficult. In spite of that, she continued to have physical relations for over three years. He submitted that, in view of the consensual relationship, the offence U/s.376 of the I.P.C. is

not made out.

5. Learned counsel for the first informant submitted that the applicant put a precondition to the informant to convert to his religion, which was not possible to her and, therefore, the marriage could not take place. He submitted that the applicant always had intention to take advantage of the informant. He never had intention to marry her and, therefore, the offence is made out because the consent is vitiated.

6. Learned APP produced the investigation papers before me. Those include statement of the Doctor who had carried out the procedure for medical termination of pregnancy.

7. The doctor had mentioned that, he was approached by the first informant and the applicant on 21.03.2022. At every stage of their relationship, the informant and the applicant were together and the informant was aware of the consequences of their affair. The F.I.R. itself mentions that the informant herself had told the applicant that she was against the idea of inter-religion marriage. Thus, the informant went ahead of their physical relations in spite of knowing everything. Therefore, at this stage, it

would not be proper to deny protection U/s.438 of the Cr.p.c. to the present applicant. However, it is made clear that all these observations are made only for the purpose of passing of this order. The Trial Court at the appropriate stage shall not be influenced by these observations.

8. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No. 730 of 2023, registered at Varsova Police Station, Mumbai, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Applicant shall cooperate with the investigation.
- iii) The Applicant shall not cause any harassment to the informant.
- iv) The Application is disposed of.

(SARANG V. KOTWAL, J.)