

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

CR. ANTICIPATORY BAIL APPLICATION NO. 353 OF 2024

Nilesh Rajendra Kamble ...Applicant
Versus
State Of Maharashtra & Anr ...Respondents

Mr. Nitin Gaware Patil for the Applicant.
Ms Mahalaxmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J

DATED : 7th FEBRUARY, 2024

P.C.:

1. The Applicant is seeking anticipatory bail in connection with C. R. No. 1053 of 2023 registered at Baramati City Police Station, District-Pune, dated 16/12/2023 u/s. 376(2)(n), 323, 504, 506, 507 r/w. 34 of the Indian Penal Code.
2. Heard Mr. Patil, learned counsel for the Applicant and Ms Ganapathy, learned APP for the Respondent-State.
3. The FIR is lodged by the victim herself. She has stated that she was 29 years of age. About 13 years prior to the lodging of the FIR, she had got married with her husband at Baramati and then had two children. After that there was some dispute between the informant and her husband. Since then, she was residing

separately. She was working as a nurse in a dental clinic. On 01/01/2020 she got acquainted with the present Applicant in a gym. Their friendship developed further. The Applicant told her that he would marry her. The Applicant further told her that she should take divorce from her husband and he would look after her henceforth. The informant told him that she was already married with two children. She was still hoping that her relationship with her husband would improve; but in spite of this, the Applicant persisted. It is alleged that on 25/09/2023 the Applicant established physical relationship with her in her own house. According to her it was a forcible. Thereafter, they had regular physical relations for about three year. It is her case that the physical relations were kept because the Applicant had promised to marry her. Subsequently, she came to know that the Applicant was having an affair with another girl. There was a quarrel between them. The Applicant went to Mumbai in October, 2023. After 1½ month the Applicant came back to Baramati but he refused to marry the Applicant. The Applicant's parents abused and threatened her. On this basis, the FIR is lodged.

4. Learned Counsel for the Applicant submitted the the FIR itself shows that it was a consensual relationship. It was going on

for more than 3 years. The informant knew that she herself is married with two children. Therefore, being an adult, she was fully aware of the consequences of her consent. He, therefore, submits that no offence is made out.

5. Learned APP relied on the narrations in the FIR. She produced the investigation papers before me. Those papers contain the statements of mother and sister-in-law of the victim. Those statements are identical to the FIR. Learned APP submitted that the informant has refused to undergo the medical examination and so far she has not attended the Court for recording her statement u/s. 164 of Cr.P.C.

6. I have considered these submissions. As rightly submitted by learned Counsel for the Applicant, the FIR itself suggests that it was a consensual relationship, which was going on for three years. The informant had two children and she had not obtained divorce from her husband. Therefore, she was aware that there was an impediment in the marriage with the Applicant. In spite of that she continued to have physical relationship with the Applicant. Therefore, at this stage, for consideration of grant of anticipatory bail, it can be seen that it was a consensual relationship and therefore the Applicant can be protected u/s. 438 of the Cr.P.C. It is

made clear that all these observations are made only for passing of this order. The Trial Court at the appropriate stage shall not be influenced by these observations.

7. Hence, the following order:

ORDER

- (i) In the event of his arrest in connection with C. R. No. 1053 of 2023 registered at Baramati City Police, the Applicant is directed to be released on bail on his furnishing 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 attend the concerned police station as and when called.
- (iii) The Applicant shall not cause any harassment to informant in any manner.
- (iv) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)