

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

ANTICIPATORY BAIL APPLICATION NO.444 OF 2024

Shaikh Wahid J. Hussain	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Milan Desai, Advocate i/b. T.R. Patel, for the Applicant.
Mr. Balraj Kulkarni, APP for the Respondent-State.
Mr. Siddharth Jaguste, Advocate for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th FEBRUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.68/2024 registered at Charkop Police Station, Mumbai on 29.1.2024 under sections 376(2)(n), 376, 323, 504, 506 read with 34 of IPC.

2. Heard Mr. Milan Desai, learned counsel for the Applicant, Mr. Balraj Kulkarni, learned APP for the Respondent-State and Mr. Siddharth Jaguste, learned counsel for the Intervenor.

3. The FIR is lodged by the victim herself. She has stated that she was 35 years of age. In the FIR itself it is mentioned that she was residing with the present Applicant. He was in the business of clothing and from his earning the informant and the Applicant were leading their life together.

4. The informant had got divorce from her husband in the year 2021. During that time she came to know the present Applicant through a common friend. Their friendship turned into love-affair. In April, 2022 the Applicant promised to marry her and requested to have physical relations. She agreed because of the promise to marry. On 20.5.2022, they had their first physical relations. They started residing together as husband and wife. The Applicant had told her that he would marry her and, therefore, she had agreed to have physical relations. In June, 2022 the Applicant's mother met the informant and told her that she needed some time and after that she would get the Applicant married with the informant. After that the informant kept asking the Applicant about the marriage. He was always asking for some time.

They started residing in another premises at Malvani. There also they resided as husband and wife and used to have regular physical relations. In September, 2023, the Applicant's mother came there and told her that the marriage was not possible. Even after that the Applicant and informant went to reside in another building because their rent agreement was over. On 3.1.2024, they had their physical relations on the last occasion. After that the informant had gone to Surat. When she came back, she called the Applicant, but, he did not meet her and abused her. He told that he would not marry her. Thereafter, this FIR is lodged.

5. Learned counsel for the Applicant submitted that bare reading of the FIR shows that it was a consensual relationship. They were living together. Therefore, by no stretch of imagination, it can be said that the offence under Section 376 of IPC is made out.

6. Learned APP opposed these submissions on the ground that the offence is serious.

7. Learned counsel for the informant submitted that the informant had agreed to have physical relations only based on the promise made by the Applicant that he would marry her and, therefore, the consent is vitiated and hence the offence is made out.

8. I have considered these submissions. The FIR itself shows that the informant was very well aware about the difficulties in getting married with the Applicant. Since April, 2022 till December, 2023 for a long time the Applicant had not taken any steps to get married and yet the informant continued to reside with him. She had clearly admitted that they were in 'live-in relationship'. And, therefore, inspite of knowing that the marriage was not taking place as promised, she continued to have physical relations with the Applicant. They resided at different places. Even in the FIR, in the first paragraph she has stated that she was residing with the Applicant.

9. Considering all these aspects, it is quite clear that it was a consensual relationship. Therefore, it is difficult to

observe that the offence under Section 376(2)(n) of IPC is made out at this stage. The Applicant's custodial interrogation is not justified. It is made clear that these observations are made only for the purpose of decision of the present Application.

10. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.68/2024 registered at Charkop Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR 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 and shall cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
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PRAKASHRAO
DESHMANE
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2024.02.16
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