

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

ANTICIPATORY BAIL APPLICATION NO.581 OF 2024

Shrikant Anand Adam Applicant

versus

State of Maharashtra Respondent

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- Ms. Seema S. Dighe i/b. Priyal G. Sarda, Advocate for Applicant.
- Mr. Nitin B. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 01st MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.842/2023, dated 27/12/2023, registered with MIDC Police Station, Solapur City, under sections 376, 376(2)(n), 417, 323, 504 of the Indian Penal Code.

2. Heard Ms. Seema S. Dighe, learned counsel for the Applicant and Mr. Nitin B. Patil, learned APP for the State.

3. Learned APP submitted that the Investigating Officer is

Nesarikar

not present, but he opposed this application on the basis of averments made in the FIR.

4. I have heard the learned counsel for the Applicant and I have perused the FIR. The FIR gives details and the informant's grievance.

5. The informant is a 46 years old lady. She was married to her husband on 15/02/1994. She has two children from her marriage. The present Applicant is the husband of the informant's husband's sister. In 2014, the informant's father-in-law sold his hardware shop. Some money was paid to the present Applicant. From that point onwards, the informant and the Applicant became close. Since the Applicant was a close relative, he used to visit the informant's house frequently. In 2014, he called the informant to his Towel factory. He promised to marry her. On 19/08/2016, the informant took Rs.4,25,000/- with her and left her house. She and the Applicant went to Kolhapur. They went to a temple and exchanged garlands. The Applicant tied Mangalsutra to her. He told her that they would

get married legally within a short time. Thereafter, they stayed in a lodge at Solapur for two months. In the year 2016 they stayed at a different lodge. In 2017, the Applicant made the arrangement for the informant to stay at Bangalore. He used to visit her there. In 2018, they stayed together in a rented place at Indapur. Thereafter they resided in another rented place at Solapur. From 2019 to 2023 they again stayed in different houses. It is her case that during all these years, she allowed the Applicant to have physical relations because the Applicant had promised to marry her. In July 2023, the informant had made an application to Women Protection Cell, but that application was withdrawn. Ultimately, since he did not marry the informant, this FIR is lodged.

6. Learned counsel for the Applicant submitted that it is a consensual relationship. No offence u/s 376 of IPC is made out.
7. Learned APP submitted that the consent was given because the Applicant had promised to marry her and ultimately he did not marry her. Therefore, the consent is vitiated.

8. I have considered these submissions. The FIR speaks for itself. She has given details of their long relationship. They have stayed at various different places and lodges since 2016 till lodging of this FIR in December 2023. That is a long association and physical relationship between them. At no point of time, she had raised any protest. She was very well aware that both of them were married to different persons. Neither of them had obtained divorce and therefore, the marriage was not possible. In spite of that, she continued residing with him. After about 7 years she came up with the case that the consent was given to have physical relations because of the false promise of marriage. From the bare reading of the FIR it is quite clear that the informant was aware of her act. She is a 46 year old lady. It is a clear case of consent between the parties. The offence u/s 376 of IPC cannot be said to be made out. The Applicant deserves protection u/s 438 of Cr.P.C.

9. It is made clear that all these observations are made only for consideration of anticipatory bail. All other legal rights

which the informant may have, are not affected by this order. She may pursue her other legal remedies. If the matter reaches the stage of trial, the Trial Court, shall not be influenced by any of the observations made in this order.

10. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.842/2023, dated 27/12/2023, registered with MIDC Police Station, Solapur City, 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 application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)