

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

ANTICIPATORY BAIL APPLICATION NO. 724 OF 2024

Mohammed Sameer Dost Mohammed Khan ..Applicant
Versus
The State of Maharashtra ..Respondents

Mr. Pravin A. Nemade for Applicant.
Ms. Rajeshree V. Newton, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 14 MARCH 2024**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.105 of 2023 registered at Sewree Police Station, Mumbai, on 23.08.2023, under section 376 of the Indian Penal Code.
2. Heard Mr. Pravin Nemade, learned counsel for the applicant and Ms. Rajeshree Newton, learned APP for the State.
3. The F.I.R. is lodged by the victim herself. She has stated that, she was 42 years of age. She had two children aged 19 years and 13 years. Her husband had passed away on 13.11.2021.

The informant's husband had booked a room at Shahapur, but the room was incomplete. Therefore, the informant and her family needed a room. She contacted her husband's friend, who introduced the informant to the present applicant and told him to help the informant. Accordingly, the applicant used to take the informant to Shahapur on his two wheeler and by train. Because of their constant interactions and travel together, they became close and developed a love affair. The applicant told her that, he was married, but since about five years he was living separately from his wife. In this background, he promised to marry her. The F.I.R. mentions that, since September 2022, they had their physical relations. It is her case that the applicant had promised to marry her. She has described various instances when they had their physical relations. She has stated that, they had such relations frequently.

4. In May 2023, the applicant told the informant that, his wife had returned and his relatives were forcing him to stay with his wife. On 06.08.2023, the applicant came to the informant's house and told her that, he would marry the informant after

obtaining divorce from his wife. The applicant then had physical relations with her against her wish.

5. On 21.08.2023, the informant called the applicant telephonically and asked him about his promise to marry her. At that time, the applicant told her that he was busy and did not give any definite answer. According to the informant, the applicant was never serious about his promise and, therefore, she lodged this F.I.R.

6. Learned counsel for the applicant submitted that the F.I.R. itself shows that it was a consensual relationship and, therefore, no offence U/s.376 of the I.P.C. is made out. Before lodging of the F.I.R. the informant had given a written complaint to the Sewree police station, in which, she had made different allegations which do not find place in the registered F.I.R. She is not consistent with her story. He submitted that, considering the consensual physical relations, custodial interrogation of the applicant is not necessary. He further submitted that the investigating agency has already filed the charge-sheet.

7. Learned APP, on instructions, accepted that the charge-sheet is already filed. She produced a copy of the charge-sheet before the Court for perusal. She submitted that, consent to have physical relations was given against the promise to marry. The applicant was never serious about his promise and, therefore, the offence is made out.

8. I have considered these submissions. The charge-sheet contains statement of the informant's co-worker working in the same beauty parlour. She has stated that the applicant used to regularly come to their parlour and the informant used to go out with him. The applicant used to have conversation with this witness also. He had told this witness also that he was not staying with his wife and that he was planning to marry the informant. This statement shows that the applicant had not kept his intention secret and had told even others about his intention to marry the informant. Subsequently, the relations were not cordial. The F.I.R. is lodged after that. The F.I.R. itself mentions that, in May 2023 itself the informant came to know that the applicant's wife had come back to stay with him. In spite of that, even in August they

had their physical relations; though, it is claimed that it was against her wish. Even thereafter, she did not lodge any complaint. She made a phone call to the applicant on 21.08.2023. This all shows that the informant was aware of the consequences of her act. The relationship was consensual. It was known to others, as well. Therefore, in this background, there is substance in the submissions of the learned counsel for the applicant that, no offence is made out. Now the charge-sheet is also filed. However, at this stage, it is not possible to record positive finding in that behalf. But for consideration of grant of relief U/s.438 of the Cr.p.c., the applicant has made out a case for such protection. It is made clear that, all these observations are made only for the purposes of passing of this order.

9. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.105 of 2023 registered at Sewree 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 co-operate with the investigation.
- iii) The applicant shall not cause any harassment to the informant.
- iv) The Application is disposed of.

(SARANG V. KOTWAL, J.)