

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 762 OF 2024

YUGANDHARA
SHARAD
PATIL

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Harshad Ramchandra Jadhav

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Aniket Nikam a/w Amit Icham, Satyajeet Mane, Dushyant Digambar, for the applicant.

Smt. M.H. Mhatre, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th MARCH, 2024

PC. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No. I-26 of 2024 registered at Mhasrul Police Station, Nashik, on 05/02/2024 under section 376 (2)(n) of the Indian Penal Code.

2. Heard Mr. Aniket Nikam, learned counsel for the Applicant and Ms. Mhatre, learned APP for the Respondent-State.

3. The FIR is lodged by the victim herself. She has stated that she was 26 years of age. In the year 2021, the Applicant and his father had visited her house with the proposal for marriage. The Applicant had taken her mobile phone number. After a few days he called the informant. His sister was speaking on phone. The informant was told by the Applicant's sister that the Applicant had liked her but they were not in a position to take any decision immediately. After about one year, in July 2022, the Applicant again made a phone call to the informant. He started calling her regularly. He again asked for marriage. She told him that they would keep in touch and that she would ask permission of her family. On 28/05/2023, the Applicant called her telephonically and asked her to meet at Nimani to discuss about their marriage. He took her to his sister's house. Nobody was present in the house. It is her case that he forcibly established physical relations with her. He promised to marry her. The informant stayed with him. In that night they again established physical relations. On the next day also she stayed in that house. By that time, the Applicant's sister and brother-in-law returned to that house. The

brother-in-law recognised her and she stayed with them till 30/05/2023. Even after that they were regularly in touch telephonically. On 16/01/2024, the informant asked him about their marriage. He asked her to call on the next day from her house. On the next day, the Applicant told that he did not want to marry her. The informant was shocked and she consumed pesticides. She was taken to the hospital for treatment. After that there was a meeting between the two families but the Applicant was firm with his decision not to marry her. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant relied on the messages exchanged between the Applicant and the informant. He submitted that even otherwise from the FIR it is quite clear that it was a consensual physical relationship. He submitted that the Applicant did not give false promise of marriage. Both families were involved and talks of the marriage were going on. He submitted that therefore offence under section 376 (2)(n) is not made out.

5. Learned APP opposed these submissions and relied on the averments in the FIR to contend that the physical relations were kept on the false promise of marriage. Therefore, offence is made out.

6. I have considered these submissions. The FIR itself shows that the informant and the Applicant had regularly met each other in connection with their marriage for quite some time. They were undecided about their marriage but they kept in touch telephonically. The Applicant's family was also aware of the marriage proposal and therefore the Applicant's brother-in-law and sister allowed her to stay with them for two days. Thus there is some background which shows that the promise to marry was not false. After the first incident, the informant had not resisted the physical relations. Therefore, there is substance in the arguments that it was a consensual physical relation. In this view of the matter, there is a strong possibility that it is a consensual physical relation. Therefore, the Applicant can be protected under section 438 of Cr.P.C. It is made clear that these observations are made

only for the purpose of deciding this anticipatory bail application.

Hence the following order.

ORDER

- (i) In the event of his arrest in connection with C.R. No. I-26 of 2024 registered at Mhasrul Police Station, Nashik-, 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 co-operate with the investigation.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)