

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

ANTICIPATORY BAIL APPLICATION NO. 900 OF 2024

Aquib Abdulla Khan Applicant
Versus
The State of Maharashtra Respondent

WITH

INTERIM APPLICATION NO. 1375 OF 2024

IN

ANTICIPATORY BAIL APPLICATION NO. 900 OF 2024

Sana Mohammed Aziz Shaikh Intervenor
In the matter between
Aquib Abdulla Khan Applicant
Versus
The State of Maharashtra Respondent

Mr. Pankaj Pandey i/b Ismail Shaikh , for the applicant.
Ms.Rajeshree V. Newton , APP for the State/Respondent.
Mr. Mayur Sosa a/w Abhishek Deorukhkar i/b Farhan Ansari for
Intervenor.

CORAM :SARANG V. KOTWAL, J.
DATE : 4th APRIL, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R No. 631 of 2024 registered at Mumbra Police Station, Thane, on 10/02/2024, under Sections 376(1), 376(2)(n), 406,

323, 504, 506 of the Indian Penal Code.

2. Heard Mr. Pankaj Pandey, learned counsel for the applicant, Ms. Rajeshree V. Newton, APP for the State/Respondent and Mr. Mayur Sosa, learned counsel for the Intervenor.

3. The FIR is lodged by the victim herself. She has stated that she was 28 years of age at the time of lodging of the FIR. She was residing with her daughter and mother. She was married with the first husband in the year 2009. She was divorced in the year 2014. In the year 2020, her friend introduced her to the present Applicant. Their acquaintance developed into friendship. On 14/02/2021, the Applicant proposed to have a love relationship with the informant who did not reply. On the next day, he repeated the proposal, at that time she informed the Applicant that she was divorced earlier and she had a daughter. After three to four days, she accepted this proposal. They used to go out with their friends. She has further stated that they had their first physical relation in March 2021. She had not stated that it was against her wish. Thereafter, they had physical relations at different places. In April 2021, she asked about marriage. The Applicant told her that there

was some loan pending against him and after it was under control, they could get married. The Applicant told her that the loan was to the tune of Rs. 40 to 50 lakhs. He asked her for financial help. It is her case that since 9/04/2021, she gave him Rs. 14,83,000/- . She used to ask him about the marriage but he used to avoid the topic. In May 2021, another lady came to her house and claimed that she was the wife of the Applicant. She told the informant not to pay any money to the Applicant as he had cheated many people. The informant asked the Applicant. He told her that the said lady was his wife. After a month, the Applicant told the informant that his wife had left home. After two to three days, the informant went to reside with the Applicant, his parents and his sister. They were residing together. After four to five days, the informant, her daughter and the Applicant started residing in a separate apartment on rental basis. They continued to have their physical relations but he avoided to marry her. He used to demand money but the informant used to refuse. She used to tell him that she could give him the money after their marriage. It is her contention that the Applicant used to abuse and beat her. After a few days, the

Applicant did not return home. The informant made inquiries with his parents. Ultimately the Applicant could be contacted through telephone. He asked for financial help. On 02/02/2024, the informant saw him in one shop at around 10.30 p.m. The informant questioned him about their marriage. He got annoyed and abused her. On this basis the FIR is lodged.

4. Learned counsel for the Applicant submitted that the FIR itself clearly indicates that it was a consensual relationship. The Applicant and the informant were residing together for quite sometime and, hence, the physical relation was with consent of the informant. Therefore no offence is made out. He further submitted that when they were staying together, the informant used to pay some amount to him and the Applicant used to pay some amount to her for their expenses. It does not mean that the offence under section 406 of the I.P.C. is made out.

5. Learned counsel for the first informant submitted that the Applicant had taken Rs. 14,83,000/-. Besides that payment

she has made further payment to the Applicant. For that purpose she had to take loan from her friends. She even sold her flat. All these amounts were lost and therefore the offence is made out. He further submitted that the informant had agreed to keep physical relations only because the Applicant had promised to marry her. Therefore the offence under section 376(2)(n) is made out. Therefore, the Applicant's custodial interrogation is necessary.

6. Learned APP supported contentions of the learned counsel for the informant. He relied on the allegations made in the FIR.

7. I have considered these submissions. I find force in the submissions made by learned counsel for the Applicant. The FIR clearly indicates that it was a consensual relationship. The informant was staying with the Applicant willingly. For a few days she resided with the Applicant's entire family consisting of the Applicant's parents and sister. At that time even the informant's daughter was staying with them. Therefore, it cannot be said that the said relationship was based on some false promise. The

informant was aware that since the beginning of their relationship, the Applicant had not taken any steps to get married and yet she continued to stay with him and to have physical relations. Therefore, at this stage, it is difficult to observe that it was not a consensual relationship.

8. The other allegations about making payment of Rs. 14,83,000/- can be looked out at from the point of view that the Applicant and the informant were staying together for a long time and they were spending their money for each other. In this view of the matter, it is doubtful as to how section 406 of the I.P.C. can be attracted in this case. Considering all these aspects, the custodial interrogation of the Applicant is not necessary. He can be protected under section 438 of Cr. P.C. Hence the following order.

ORDER

- (i) In the event of his arrest in connection with C.R No. 631 of 2024 registered at Mumbra Police Station, Thane, the Applicant is directed to be released on bail on his executing 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 Applicant shall not cause any harassment to the first informant.
- (iv) The Application stands disposed of accordingly.
- (v) With disposal of the Anticipatory Bail Application, the Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)