

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

ANTICIPATORY BAIL APPLICATION NO. 1128 OF 2024

Mohan Palaniyappan Devendra

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Shyamrishi Pathak a/w. Ganesh Singh for Applicant.

Mr. C. D. Mali, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 25 APRIL 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.383 of 2024 registered at Dharavi Police Station, Mumbai, on 13.04.2024, under sections 376, 417 and 323 of the Indian Penal Code.

2. Heard Mr. Shyamrishi Pathak, learned counsel for the applicant and Mr. Mali, learned APP for the State.

3. The F.I.R. is lodged by the victim herself who is 20 years of age. She has stated that her family had got her married to her husband in the year 2021. She started residing with her

husband. There used to be frequent quarrels between them. There was big age different between them. She has stated that, since March 2023, the informant and the applicant started conversing with each other telephonically. Their friendship grew and they fell in love. The informant used to tell the applicant about the dispute between herself and her husband. The applicant told her to leave her husband and start residing with the applicant. Initially, the informant refused. In the meantime, because of the constant quarrels with her husband, the informant left her husband's house and started residing with her mother from 22.10.2023. But her mother refused to allow her to stay there. Therefore, the informant started residing with her friend. The F.I.R. mentions that on 23.10.2023 the applicant took her to a lodge at Powai and kept physical relations with her. She was not willing, but he had promised that he would marry her. After that the informant told her mother that she and the applicant decided to get married. The F.I.R. further mentions that, in November 2023 the informant and the applicant stayed together for 10 days in the house of the applicant. Even at that time they had frequent physical relations

between them. The informant tried to come back to her mother's house, but her mother did not entertain her. She had opposition to the marriage between the informant and the applicant. The informant told this fact to the applicant. The applicant then took the informant to his house and told his mother that, he was to get married with the informant. After that the informant started staying with the applicant and his mother. During that period also, they had frequent physical relations. After that, till March 2024 the applicant did not take any steps to get married and, therefore, she lodged this F.I.R.

4. Learned counsel for the applicant submitted that, bare reading of this F.I.R. shows that it was purely a consensual relationship. She was aware that she was not divorced from her first husband and marriage was not possible between the informant and the applicant and yet she continued her physical relations. She continued to stay in the applicant's house. Therefore, offence U/s.376 of the I.P.C. is not made out.

5. Learned APP submitted that the statement of the

informant is yet to be recorded U/s.164 of the Cr.p.c. He submitted that the informant had kept physical relations only on the promise made by the applicant, therefore, the offence is made out.

6. I have considered these submissions. I find force in the submission of the learned counsel for the applicant that, it was a consensual relationship. The F.I.R. itself clearly indicates that the informant was staying with the applicant on different occasions. For a long period they stayed together. They used to have physical relations. There was consent of the informant. She was aware that there was no legal divorce between herself and her husband. Thus, there was legal impediment in getting married with the applicant. The relations were not hidden either from the family of the applicant or from the informant's family. In this view of the matter, the applicant deserves protection U/s.438 of the Cr.p.c.

7. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.383 of 2024 registered at Dharavi 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 cooperate with the investigation.
- iii) The applicant shall not cause any harassment to the informant.
- iv) The Application is disposed of.

(SARANG V. KOTWAL, J.)