

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

ANTICIPATORY BAIL APPLICATION NO. 601 OF 2024

Naushad Pasha Pathan

.... Applicant

Versus

The State of Maharashtra

.... Respondent

YUGANDHARA
SHARAD
PATIL

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by
YUGANDHARA
SHARAD PATIL
Date:
2024.03.06
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Mr. Kunal Jha a/w Riya Sayyed, for the applicant.

Ms. Rajeshree V. Newton, APP for the State/Respondent.

Mr. Kamlesh Mishra, for the Intervenor.

CORAM :SARANG V. KOTWAL, J.
DATE : 5th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No. 89 of 2024 registered at Samta Nagar Police Station on 08/02/2024 under sections 376(2)(n), 417, 323, 504 of the Indian Penal Code.

2. Mr. Kamlesh Mishra learned advocate appears and states that he has instructions to appear for the informant. He

seeks permission to file the Intervention Application. He seeks adjournment for filing the said Application. At his request, today I am adjourning the matter. However, I have heard the parties for consideration of ad-interim relief.

3. Heard Mr. Kunal Jha, learned counsel for the Applicant, Ms. Newton, learned APP for the Respondent-State and Mr. Kamlesh Mishra, learned counsel for the informant.

4. The FIR is lodged by the first informant who was 28 years of age. She was earlier married to somebody else in the year 2016 but since 2017 she was residing at her mother's house and in June 2022 she had obtained divorce from her first husband. She has mentioned that since March 2020, she got acquainted with the present Applicant who was Assistant Police Inspector. He had his duty near the informant's house during the lock down. The FIR further mentions that there was love affair between them. It is her case that he suppressed from her that he was married and was having a child. The FIR mentions different dates and different

period during which they stayed together and had physical relations. On one occasion, she became pregnant but suffered miscarriage. On the second occasion, she gave birth to a daughter because of the physical relations with the present Applicant. Even thereafter, the Applicant continued to have physical relations but did not marry her. According to her, this amounts to the offence and she filed this FIR.

5. Learned counsel for the Applicant submitted that it was a clear case of consensual physical relations. Even as per the FIR, they were having physical relations for a long time. Some of the incidents mentioned in the FIR are not correct. On these dates the Applicant was elsewhere. He submitted that there are WhatsApp messages exchanged between the Applicant's wife and the informant from the year 2022. This shows that the informant was very well aware of the marital status of the Applicant and in spite of that, she had kept physical relations with the Applicant. Therefore offence under Section 376 of the Indian Penal Code is not made out.

6. Considering these submissions, the Applicant can be protected by way of ad-interim relief till the next date. Hence, the following order.

1. ORDER

1. In the event of his arrest in connection with C.R. No. 89 of 2024 registered at Samta Nagar Police Station ,till the next date, 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.
2. This order shall operate till 17/04/2024.
3. The Applicant shall attend the concerned police station as and when called and shall cooperate with the investigation.
4. The first informant is at liberty to file her Intervention Application in the Registry.
5. Stand over to 17/04/2024.

(SARANG V. KOTWAL, J.)