

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

ANTICIPATORY BAIL APPLICATION NO.601 OF 2024

**WITH
INTERIM APPLICATION NO.1358 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.601 OF 2024**

Naushad Pasha Pathan Applicant

versus

State of Maharashtra Respondent

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- Mr. Kunal Jha, Advocate for Applicant.
- Mr. Kamlesh Mishra i/b. Uvaank Juris, Advocate for Intervenor.
- Mr. Swapnil V. Walve, APP for the State/Respondent.
- IO – PSI Bajrang K. Desai, attached to Samta Nagar Police Station.

**CORAM : SARANG V. KOTWAL, J.
DATE : 09th AUGUST, 2024**

P.C. :

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

2. Heard Mr. Kunal Jha, learned counsel for the Applicant, Mr. Kamlesh Mishra, learned counsel for the Intervenor and Mr. Swapnil V. Walve, learned APP for the State.
3. The FIR is lodged by the victim herself. She was 28 years of age at the time of lodging of the FIR on 08/02/2024. The informant had got married in 2016, but she was staying separately from her husband since 2017 and they were divorced in June 2022. She has mentioned in the FIR that in March 2020, she got acquainted with the Applicant, who was posted at Samta Nagar Police Station as the Assistant Police Inspector. Those were the days of Covid pandemic. The Applicant developed close friendship with her by helping her with miscellaneous work like bringing vegetables, taking the informant to hospital, etc. Thereafter, the Applicant and the informant started keeping in touch through WhatsApp. Slowly, their friendship developed into love relationship. It is her case that the Applicant had not told the informant that he was already married and had a child. The Applicant proposed marriage to her. The informant agreed. They started meeting more often. The FIR mentions that they had

their first physical relations on 05/06/2020. She has stated that it was against her wish. But thereafter, he started to visit her house more often. He started residing with her when there was no one else in the house. The FIR thereafter, goes on to mention that they used to have regular physical relations. In June 2020 she became pregnant and suffered abortion in July 2020. Their physical relations continued and she again became pregnant in August 2020. This time the pregnancy continued and she delivered a daughter in May 2021. It is her case that the Applicant used to give money for expenses of the daughter. The FIR thereafter again goes on to mention the various occasions when they continued to have their physical relations. Even in April 2023, the Applicant called the informant to Latur and they had their physical relations in a lodge. In June 2023 also, they had regular physical relations. But thereafter, he started quarreling and abusing her. He also started beating her and avoided marrying her. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that bare reading of the FIR shows that it was purely a consensual

relationship. It continued for about three years. Therefore, it cannot be said that there was any misconception of fact. The informant herself was a married lady and got divorced only in June 2022. He invited my attention to the WhatsApp chats between the Applicant's wife and the informant. Those are dated 27/06/2022. That means that atleast in June 2022, the informant was aware of the existence of the Applicant's marriage and his family. In spite of that, the physical relations continued even after that. Therefore, there was clearly no misconception of fact. In this view of the matter, the offence is not made out and the Applicant deserves protection u/s 438 of Cr.PC.

5. Learned counsel for the Intervenor submitted that at the first instance when the Applicant established physical relations with the informant, he had not told the informant about his marriage. This went on for some time till June 2022. he submitted that therefore the physical relations were kept under misconception of fact and therefore the consent given by the informant for such physical relations is vitiated. He

submitted that considering that the informant has a daughter from the Applicant, the offence is serious and he may not be protected by an order of anticipatory bail u/s 438 of Cr.PC.

6. Learned APP submitted that the investigation in this case is completed and the charge-sheet is already filed. He submitted that the Applicant has cooperated with the investigation. He, on instructions of the investigating agency, states that, the investigating agency does not need the Applicant's custody for the purpose of investigation.

7. I have considered these submissions. The physical relations continued for three years. The FIR itself shows that they were staying together on number of occasions. It is clear from the WhatsApp chats between the informant and the Applicant's wife that atleast in June 2022 the informant was aware of his marriage. In spite of that, the physical relations continued even after that. There is no reference to this WhatsApp chat in the FIR. Therefore, there is substance in the submissions of the learned counsel for the Applicant that it was

purely a consensual relationship and even the informant was aware that the Applicant was married. At this stage, there are circumstances in favour of the Applicant. The charge-sheet is already filed. The investigating agency does not want the Applicant's custody for the purpose of investigation. In this view of the matter, the Applicant can be protected u/s 438 of Cr.P.C. It is made clear that all these observations are made only for the purpose of deciding this application. The Trial Court at the proper stage shall not be influenced by these observations.

8. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.89/2024, dated 08/02/2024, registered with Samta Nagar Police Station, Mumbai, 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 not cause any harassment to the informant or her family.
- (iii) The application stands disposed of accordingly.
- (iv) With disposal of the Anticipatory Bail Application, the companion Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)