

Amberkar

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

**ANTICIPATORY BAIL APPLICATION NO. 142 OF 2025**

Prathamesh Prakash Kankekar

.. Applicant

**Versus**

State of Maharashtra & Anr.

.. Respondents

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- Ms. Bhagyesha Kurane, Advocate for Applicant.
- Mr. Hitendra Dedhia, APP for Respondent - State

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**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 17, 2025**

**P. C.:**

1. Heard Ms. Kurane, learned Advocate for Applicant and Mr. Dedhia, learned APP for State.

2. This is an Anticipatory Bail Application filed by Applicant under Section 438 of the Code of Criminal Procedure, 1973 apprehending arrest in connection with FIR bearing C.R. No. 824 of 2024 registered with Vishnu Nagar Police Station, Thane City for offences under Sections 376, 313, 323, 504 of the Indian Penal Code 1860, (for short “IPC”).

3. The backdrop of Prosecution’s version is that the Complainant got separated from her husband in the year 2014 and had been residing in Kopergaon Dombivali along with her minor daughter. It was during November 2017 when the Applicant who used to spend

time with his friend near residence of Complainant expressed his liking towards her and also assured that he would marry her and take care of her daughter. Applicant is nine year younger than Complainant. It is the case of prosecution that Applicant used to regularly visit the residence of Complainant and used to force himself on her and he established physical relationship with her on multiple occasions from the years 2017 to 2024 in spite of her making it clear at the onset that she wished to abstain from the same until their marriage. It is also alleged that on 09.01.2018, Applicant took the Complainant to a guest house and tied a fake mangalsutra around her neck and thereafter proceeded to click obscene photographs of her. It is also alleged that Applicant forced the Complainant to terminate her pregnancy twice i.e. on 11.01.2021 and 30.09.2022. It was only when Applicant expressed his desire to establish physical relationship with Complainant's daughter, she became sure about the lack of intent of the Applicant to marry her and hence proceeded to file the FIR on 14.09.2024.

4. Ms. Kurane at the outset would oppose the prosecution version and would open her submissions by describing the FIR as frivolous. She would submit that although the Applicant and Complainant were in a consensual love relationship for several years, both were aware of the fact that there existed no scope of them getting married as the

Complainant had merely separated from her husband and had not sought a divorce from her husband and hence the question of making a promise did not arise. She further submits that the Complainant as per her own version continued to engage in consensual physical relationship with the Applicant as recently upto 12.03.2024 without raising an alarm despite her not having dissolved her marriage with her husband till date and hence the charges levied against the Applicant are frivolous in nature. She would state that there is a delay of 7 years from the first alleged incident in 2017 and the Complainant's silence speaks for itself that the relationship was indeed consensual which has now turned sour resulting into lodging of the FIR. Insofar as the allegations of forcefully aborting the fetus, she would rely upon the medical reports to submit that Complainant had equally consented for the same. She would submit that the fact that the marriage of Complainant still subsists is suppressed in the FIR and that the Complainant has approached the law enforcement agencies with unclean hands. Hence she would pray to the Court for the Applicant to be enlarged on anticipatory bail.

5. Mr. Dedhia would counter the submissions of the Applicant by stating that the Complainant had refrained from lodging FIR against the Applicant only in the hope that the Applicant would marry her upon the dissolution of her marriage but his intent was never to marry

her but only to engage in physical relationship on the pretext of marriage. He would fairly submit that while the Complainant had initiated legal proceedings for dissolution of her marriage, these proceedings were ultimately dismissed. This resulted in a prolonged period of seven years during which the parties' relationship did not culminate in marriage and Complainant remained silent regarding the Applicant's actions in the hope of securing a stable future for herself and her daughter. Only after the Applicant expressed his desire to establish a physical relationship with the Complainant's minor daughter did she fully grasp his sinister intentions. It became clear that his promise of marriage was merely a ploy to exploit her, silence her, and conceal the fact that he had already sexually assaulted her against her will. Lastly, he would conclude his arguments by stating that the charges levied against the Applicant are of serious nature and he poses a risk of harming the Complainant and her minor daughter as well as the society at large and thus should not be set at liberty.

6. I have heard Ms. Kurane and Mr. Dedhia and with their able assistance perused the record of the case.

7. The record placed before me suggests that the charges attracted against the Applicant before me are confined to alleged acts upon the Complainant and not her minor daughter and hence my observations will be restricted to that extent. The Complainant has alleged offences

under Sections 376, 313, 323 and 504 of IPC against the Applicant. I shall *prima facie* deal with each charge.

8. The charge under the provisions of Section 376 against the Applicant is made alleging that the Complainant engaged in physical relationship with the Complainant on multiple occasions on the pretext of marrying her without the intention of fulfilling the same. Both parties are major aged above 30 years, the complainant is 9 years elder to the Applicant. She has admittedly allowed the Applicant to enter and stay in her residence regularly for a prolonged period of about 7 years, she has also been going to the guesthouse on a monthly basis with him and also engaging on conversations on mobile phone on a frequent basis as per her own statement in the FIR, in such circumstances, the likelihood of a non-committal consensual relationship later turning sour cannot be ruled out *prima facie*.

9. In the case of ***Mahesh Balkrishna Dandane Vs. State of Maharashtra***<sup>1</sup>, this Court (Coram : Smt. M.R. Bhatkar, J.) has held as under:-

*“6. The case is based on promise to marry and fall out of broke-up relationship. Nowadays keeping sexual relationship while having an affair or before marriage is not shocking as it was earlier. A couple may decide to experience sex. Today especially in metros like Mumbai, Pune etc., the Society is becoming more and more permissive. Though unlike western countries, we have social taboo and are hesitant to accept free sexual relationship between unmarried couples or youngsters as their basic*

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1 2014 SCC OnLine Bom 348

biological need; the Court cannot be oblivious to a fact of changing behavioural norms and patterns between man and woman relationship in the Society so also a fact of ground realities and of late marriages. A major and educated girl is expected to know demand of her body and to understand the consequences of getting into sexual relationship. Today the law acknowledges live in relationship. The law also acknowledges a woman's right to have sex, woman's right to be a mother or woman's right to say no to motherhood. Thus, having sexual relationship with a man whether is her conscious decision or not is to be tested independently depending on the facts and circumstances of each and every case and no straight jacket formula or any kind of labelling can be adopted.

7. For example, an uneducated girl from a very poor strata of a Society is induced to keep physical relationship on promise to marry by a person from a higher class, then there may be a possibility of prosecution under section 376 of IPC. Similarly, if a man suppresses his first marriage and keeps physical relationship with a girl promising to marry her or subsequently marries then also it can be said that consent is adopted fraudulently, therefore, he can be prosecuted under section 376 of IPC.

8. However, every breach of promise to marry cannot be said to be either a cheating or rape. A couple in love with each other may be having sexual relationship and realize that they are not compatible and sometimes love between the parties is lost and their relationship dries gradually, then earlier physical contacts cannot be said as rape. A marriage cannot be imposed, as a search of life partner depends not only on physical compatibility but also on emotional, psychological bonding. It is a matter of choice related to individual's notions of suitability, emotional, psychological comfort and biological requirement. Thus while granting anticipatory bail, all these factors are required to be considered.

9. In the present case, both the applicant/accused and complainant are graduated in law. A fact of their sexual relationship is admitted. Their relations were going on for a long period i.e. from 2009 till 2013. However, there was a letter written by the applicant/accused in the year 2011 wherein he has mentioned that the complainant is forcing him to marry as she tried to commit suicide. Thereafter also their physical relationship continued. The photocopy of SMS sent on 1<sup>st</sup> July, 2013 prima facie discloses that complainant had an idea that applicant/accused has decided to marry other girl. Moreover, to keep physical relationship or not is a choice of both the parties. Prima facie it does not appear from the record that the complainant was either forced to keep sexual relationship or she was really induced to such an extent that she has no other option but to keep physical relationship with the applicant/accused. Even though if at all there is bonafide

*promise to marry and the girl chooses to keep physical relationship with that persons and if a boy withdraws his promise, as they are not psychologically comfortable with each other, then it cannot bring that particular act within the purport of offence under section 375 of IPC. The complainant is an educated girl and it shows that it was her conscious decision to keep sexual relations with him. Prima facie at this stage, possibility of non-committal, consensual relationship cannot be denied.”*

10. In so far as the charge under Section 313 of IPC is concerned, it appears *prima facie* that the Complainant had consented for the termination of pregnancy. This is because the Complainant has undergone the procedure twice, once in the year 2021 and another in the year 2022. The Complainant stayed silent on the aspect and only lodged an FIR in the year 2024 along with other charges which are not connected with the aspect of forceful termination of pregnancy. The silence seems unreasonable and the tagging of allegations along with other offences further solidify the doubt in Court’s mind that the case might be one where a relationship has turned sour and the legal machinery is set into motion in order to recriminate the other party.

11. Lastly, with regards to the remainder of charges attracted against the Applicant, there is no material on record for me to make an opinion that such offences were committed. Taking an overall view of the material placed before me, the Application stands allowed in terms of prayer clause (a) and the Applicant is granted pre-arrest bail on the following terms and conditions:-

- (i) In the event of the arrest, the Applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case;
- (iii) Applicant shall attend the Police Station on the first Monday of every month between 10.00 a. m. and 12.00 noon until the Charge-sheet is filed and as and when called for by the investigating officer thereafter;
- (iv) Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) Applicant is directed by this Court to deposit his mobile phone and laptop, if any, with the

Investigation Officer by tomorrow i.e. on  
18.01.2025;

(vi) If there is a breach of any of the aforesaid  
conditions, the prosecution shall be at liberty to  
seek cancellation of the Applicant's bail.

12. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

13. Application is allowed in the aforesaid terms and is accordingly disposed of.

14. All concerned to act on the authenticated copy of this order.

Amberkar

[ MILIND N. JADHAV, J. ]

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Digitally signed  
by RAVINDRA  
MOHAN  
AMBERKAR  
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