

ABA 2079/2022

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ORDER

MHCC050069592022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 2079 OF 2022
(C. R. No.1599/2022)
(CNR NO.MHCC05-006959-2022)**

Harish Rajman Patel

Age – 30 years, Indian Inhabitant,
Residing at : Sahakar Road,
Jogeshwari (West), Mumbai.

...Applicant/Accused

V/s.

The State of Maharashtra

(Through Oshiwara Police Station, Mumbai)

....Respondent

Ld. Advocate Mr. Shreyas Mapankar for the Applicant/Accused.

Ld. APP Mr. Sachin Jadhav for The State.

Ld. Adv. Mr. Chirag Rathod for the intervenor.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI. SHRIKANT Y. BHOSALE
(C.R.NO.9)**

DATE : 19TH JANUARY, 2023

ORDER

This is an application for grant of anticipatory bail in connection with C. R. No. 1599/22 registered with Oshiwara police station under sections 376, 323, 504, 506 of The IPC.

2. The prosecution vide say at Exh. 6 resisted the application.

Apart from the said the intervenor has filed her written submission Exh. 7.

3. Heard Ld. Adv Mr. Shreyas Mapankar for the applicant, Ld. APP Mr. Sachin Jadhav for the prosecution and Ld. Adv. Mr. Chirag Rathod for the intervenor. The intervenor is also present in person and opportunity to make submission is also given to her.

4. From the material on record it is seen that the informant is a married woman and fell with a love with the present accused in November, 2021. They resided together for one year. On 23.10.2022 the informant lodged the first information with Kashimira police station alleging that by giving false promise of a marriage the present applicant established sexual intercourse with her. The first information under section 376 and other offences of IPC were registered. The present applicant filed first ABA on 12.12.2022 bearing registration no. 4146 of 2022 in Thane Court. The informant filed consent affidavit in that case and subsequently the Court granted anticipatory bail to the present applicant.

5. According to the informant thereafter applicant approached her and again assured to marry the informant. On the basis of the assurance of the marriage, the informant again met the applicant on 09.12.2022. The applicant took her to one hotel and inspite of refusal by the informant, the applicant forcibly committed intercourse with her. On that day the informant was abused and was also assaulted. According to informant on 10.12.2022 again the applicant committed sexual intercourse with her. It is her next contention that the applicant threatened her that her photographs would be viral on social media, if she failed to withdraw her case filed at Kashimira police station,

therefore, on 12.12.2022 first information is given to Oshiwara police station. On 13.12.2022 first information was registered.

6. During the course of arguments the applicant as well as intervenor filed some Whats App chat which were objected by the prosecution, however, according to all the parties the then Presiding Officer asked the investigation officer to verify the Whats App chat.

7. Now, according to Adv for the applicant the Whats App chat dated 09.05.2022, 29.10.2022, 17.11.2022, 11.12.2022, 13.12.2022 are considered, it is seen that the informant is trying to blackmail the applicant by filing such type of cases. According to applicant the allegation against him are false and frivolous. The Whats App chat clearly shows that the informant was demanding Rs. 5 Lakhs for allowing the ABA application. According to him prior to filing of the present case the informant had threatened the applicant to satisfy her demand of money and therefore, the applicant had filed N.C. complaint to Amboli police station on 13.10.2022. He further submits that the applicant is married woman and still she is not given a divorce. In such circumstances, the sexual intercourse if accepted, can not be said to be a rape. According to him the sexual intercourse appears to be a consensual and therefore, it is difficult to accept the commission of offence under section 376 of the IPC.

8. As against this Ld. APP submit that the consent for the sexual intercourse was obtained on the pretext of promise to marry. Even though the first case was registered, the applicant again gave her promise to marry and therefore, consent affidavit was filed. The informant was again deceived by the applicant by establishing sexual intercourse with her on false promise of marriage. Thus, the offence is

of serious nature and custodial interrogation is absolutely necessary.

9. So far as the Whats App chat is concerned, according to prosecution the investigation officer has verified that Whats App chats are exchanged through mobile device of the applicant and the informant. However, the prosecution is not confirming the genuineness of the Whats App chat.

10. As against this Ld. Adv for the intervenor submits that when the talks for consent term in first case were going on, the informant was present in the Court hall, at that time the applicants Advocate took the mobile phone of the informant and might have sent the messages. However, the informant has not sent those messages. He also invited my attention towards the Whats App chat alongwith Exh. 7 and submits that the Whats App messages issued by the applicant clearly shows that he had promised to marry the informant.

11. From the material on record and considering the arguments advanced by the respective Advocates it is seen that prior to the present case the informant had filed case making similar allegations and in that case the Sessions Court, Thane has granted anticipatory bail to the present applicant vide its order dated 12.12.2022 in ABA No. 4146/2022. According to the informant thereafter again the applicant established sexual intercourse on promise of marriage. In this regard it is necessary to consider that the informant is already married with someone. In such circumstances, she is not entitled to marry with the applicant, unless the previous marriage is dissolved. On this background, it is seen that the promise to marry is not a promise which can be fulfilled because of the legal hurdle. In spite of knowing this the applicant continued sexual relation with the informant.

12. Apart from the said, the Whats App chat confirmed by the investigation officer shows that the informant was demanding Rs. 5,00,000/- (Rupees Five Lakhs Only) from the applicant for not filing the present case. If all these facts are considered, there appears arguable case to the applicant. Considering the facts and circumstances of the case, there appears no need of custodial interrogation. In short considering the facts and circumstances of the case, the Court is of the view that case for anticipatory bail is made out. Hence, the order.

ORDER

1. Anticipatory Bail Application No. 2079 of 2022 stands conditionally allowed and disposed off in following terms.
2. In the event of arrest of applicant/accused **Harish Rajman Patel** in aforesaid C. R. No. 1599/2022 for the offence punishable under sections 376, 323, 504, 506 of The Indian Penal Code, 1860 registered with Oshiwara Police Station, Mumbai, he be released on his executing P. R. Bond of Rs. 20,000/- (Rupees Twenty Thousand Only) and on furnishing one or two surety/sureties of like amount and on accepting and complying following terms and conditions -
 - a) He shall not tamper with prosecution witnesses in any way.
 - b) He shall produce his Identity Card, address proof and furnish his mobile number as well as land-line number with bail papers.
 - c) He shall attend concerned police station on 24.01.2023, 27.01.2023 and 31.01.2023 between 10.00 a.m. to 2.00 p.m. and thereafter, if required by the investigation officer by his order in writing.
 - d) He is directed not to make any contact with the informant by any means without prior permission of the Court and he shall not tamper with the prosecution evidence by any means.
 - e) He shall attend the trial regularly.

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ORDER

3. The observation made in this order are restricted to this application only and the Trial Court shall not get influenced by the observation of this Court.

(Dictated and pronounced in presence of Ld. Advocate for Applicant & Ld. APP)

Date: 19.01.2023

(Shrikant Y. Bhosale)
The Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi.

Dictated on : 19.01.2023
Transcribed on : 19.01.2023
Checked & corrected on : 19.01.2023
Signed on : 19.01.2023
Sent to Dept. on :

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 20/01/2023 Time : 10.52 A.M. UPLOAD DATE AND TIME	Ms. Tejal C. Rane (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ S. Y. BHOSALE (Court Room No.9)
Date of Pronouncement of JUDGMENT/ORDER	19.01.2023
JUDGMENT/ORDER signed by P.O. on	19.01.2023
JUDGMENT/ORDER uploaded on	20.01.2023