

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

ANTICIPATORY BAIL APPLICATION NO.2221 OF 2016

Akshay Manoj Jaisinghani

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.Rajiv Patil, Sr.Advocate i/b R.S. Kate for the Applicant
Ms.N.S. Jain, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 9, 2017

ORAL ORDER:

1. This is an application for pre-arrest bail as the applicant/accused is prosecuted for the offences punishable under sections 376, 504 and 506 of the Indian Penal Code in C.R. No.993 of 2016 registered with Yerwada police station, Pune. The complainant is 21 years old girl, doing the course of interior designer. She came in contact with the applicant/accused, who is 21 years old, in 2015 and became friendly with him. On 13.12.2015, he invited her for celebration of his birthday, so she attended the party alongwith her friends. Thereafter, according to her supplementary statement, she spent Rs.2.5 lakhs for gifting

gold chain, mobile phone of Samsung company, laptop and hair straightner and clothes to him. The applicant/accused has promised her to marry. On 13.2.2016, when she went to his house at Kalyani nagar, he promised her to marry and had forcible intercourse with her. Thereafter, he took her to various hotels and under the promise to marry, he had forcible sexual intercourse with her, without her consent. He consumed liquor, drugs at the time of sexual intercourse. So, the prosecturix informed about their relationship to the parents of the applicant/accused. However, they did not react in any manner. On 31.7.2016, she realised that she was pregnant out of sexual relations with the applicant/accused. When she informed him, he told her to go for termination of pregnancy. He, against her wish, gave her pills for termination of pregnancy. However, it was not successful. Then again on 16.9.2016 in hotel Sudarshan at Kalyani Nagar at Pune, nearly for 10 days, he had forcible intercourse with her. Thereafter on 24.10.2016, she went to Dubai to her parents where her parents are residing. In Dubai, she had medical check-up and found that pregnancy was not terminated. Thereafter, on 4.12.2016, she returned to India and contacted the applicant/accused. At that time, he abused her and also

threatened that she should not give any complaint against him to the police. Thus, it is a case of the prosecutrix that the applicant/accused under the false representation of marriage had obtained her consent fraudulently and had sexually abused her.

2. The learned Senior Counsel for the applicant/accused has submitted that the sexual relationship was consensual. So there was no question of obtaining consent by fraud. The applicant/accused is innocent and has not committed any offence. The learned Senior Counsel submitted that the applicant/accused is 21 years old boy who is working in a company. He spent Rs.2.5 lakhs on the prosecutrix in gifting her various things and not the prosecutrix. He has no criminal record and therefore, he be granted pre-arrest bail.

3. Learned Prosecutor has opposed the application and submitted that the applicant/accused has promised to marry and because of him, the complainant became pregnant. Against her wish, she was compelled to go for termination of pregnancy and thereafter, the applicant avoided her and broke his promise to marry. The offence is serious as the girl remained pregnant and

the applicant/accused is to be taken into custody. The custody of the applicant/accused is required and hence, the bail is to be rejected.

4. This is an unfortunate but routine case of a boy and girl having affair, indulging into sexual relationship and ultimately ending into a breakup. Considering the facts of the case, undoubtedly, the complainant and the applicant/accused had consensual sexual relationship and were in love with each other.

5. In a case of rape, the act of sexual intercourse is forcible and without consent of the woman. However, the consent obtained by fraud amounts to no consent and therefore, if there is sexual intercourse with consent but obtained by fraud, it amounts to rape. For example, if an illiterate woman is given promise to marry and under that promise, her consent is obtained for sexual intercourse, then, it can be said that the consent is obtained by fraud. Similarly, if by hiding the identity or impersonation, consent is obtained, then it is on playing fraud. So also, a married man obtains consent of an unmarried girl under promise to marry by suppressing his previous marriage, then that consent given by the unmarried girl to have sexual intercourse is consent obtained fraudulently and it is

no consent. Such and similar instances fall within the definition of rape.

6. Previously, in number of such matters, this Court has taken a specific view and has held that when a woman is major and educated and depending on facts on the case, she is supposed to be fully aware of the consequences of having sexual intercourse with a man before marriage. In the event of consent obtained by fraud, inducement is a necessary ingredient. There should be some material on record to believe prima facie that the girl was induced by the accused to such an extent that she was ready to have sexual intercourse with him. Promise to marry cannot be said to be an inducement in these types of cases. However, the Courts now-a-days do come across registration of many cases of the offence of rape under section 376 of the Indian Penal Code. If the act is repeatedly committed, then, section 376 (2)(N) is also invoked where the punishment is not less than 10 years. Thus, the facts i.e., the life and liberty of the accused in view of the gravity of the punishment on one hand and mental trauma, physical sufferings of the girl on the other hand, are required to be appropriately considered with balanced view.

7. This Court has already held in the case of **Mahesh Balkrishna Dandane vs. State of Maharashtra**¹ that to satisfy the sexual urge is a free decision of every major individual irrespective of gender. Thus, promise to marry in any manner, cannot be a condition precedent to have sex. However, the behavioural pattern and psyche of Indian society has to be taken into account while dealing with this issue. Since many generations, virginity of a woman is considered precious and there is a moral taboo that it is a responsibility of a woman to be a virgin at the time of marriage. However, today, the young generation is exposed to different interactions with each other and is well informed about sexual activities; similarly, the late marriages and economic independence are also relevant factors. The society is trying to be liberated but carries baggage of different notions of morality wherein sex before marriage is a matter of censure and hence, it is a hush-hush subject. In fact, it is an issue before the social thinkers to educate and guide the society. Under such circumstances, a young woman who is in love with a boy forgets that to have sex is her option like her counterpart but somehow refuses to take the responsibility of

¹ ABA No.27 of 2014 decided on 12.3.2014

her decision. If at all she has indulged into sexual activities even on a promise to marry, the girl may land up emotionally and physically in a pathetic situation after break up. To marry someone is a matter of choice. It cannot be imposed on anybody. Only because two individuals are sexually involved with each other, it is not compulsory for them to marry. Initially, a boy and a girl genuinely may want to marry and are true to their emotions and establish sexual relationship, however, after some time, they may find that they are not mentally or physically compatible and one decides to withdraw from the relationship. Under such circumstances, nobody can compel these two persons to marry only because they had sexual relationship. It is necessary to have a healthy, objective and legal approach towards these incidents. There may be moral bonding between the two persons when they indulge into sexual activities with promise to marry and it is also a fact that ultimately women only can remain pregnant and therefore, she suffers more than the man. However, in law, this cannot be labelled in any manner as a rape.

8. In the circumstances, the anticipatory bail application is allowed on the following terms:

- i) In the event of arrest the applicant shall be released on bail upon furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;
- ii) The applicant shall not contact the complainant or the witnesses or pressurise any of them;
- iii) The applicant shall attend the concerned police station as and when called and cooperate with the Investigating Officer.

8. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)