

MHCC050031762021



**IN THE COURT OF SESSIONS, BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.**

ANTICIPATORY BAIL APPLICATION NO.959 OF 2021

Shri Vijay Shyam Giri
Age 31 years, Indian Inhabitant
Occ: business
Residing at Sai Sewa Sangh Chawl,
Behram Baug, Link Road,
near Gyan Sagar Vidyalaya,
Ganesh Nagar, Mumbai 400 102.

...Applicant

Versus

The State of Maharashtra
(Oshiwara Police Station, Mumbai
in CR No. 590 of 2021)

...Respondents

Shri V.K.Dubey, Advocate for applicant.

Shri P.K.Mahajan, Addl. PP for the State/respondents.

CORAM: HIS HONOUR 2nd ADDL.PRINCIPAL JUDGE
AND ADDITIONAL SESSIONS JUDGE

Shridhar M. Bhosale

(C.R.No.1)

DATE : 25th August, 2021

ORDER

1. This is an application under Section 438 of Code of Criminal Procedure(hereinafter referred as “Cr.P.C.”) for anticipatory bail on

apprehension of his arrest in connection with CR No.590 of 2021 registered at Police Station, Oshiwara for the offences under Section 376(2)(n), 406, 420, 323, 506 of the Indian Penal Code(hereinafter referred as 'IPC').

2. In short, in 2013 informant-victim was working in Body Care Cosmetics Company. One Vijay Srivastav was working with her. During the birthday party of Vijay Srivastav in Food-Inn Restaurant at Lokhandwala, she got acquainted with his maternal uncle's son i.e. applicant-accused. It was told that he is doing real estate business. On next day, applicant-accused by taking mobile number of the informant-victim from Vijay Srivastav, contacted her and thereafter, they started talking on mobile. Applicant-accused told her that he loves her and shown willingness to continue his life with her and she consented for it. In last week of July-2019, applicant-accused took the informant-victim to his house at Andheri(W) and tried to get intimate with her. Hence she resisted it. However he told that he is ready to marry with her and then forcefully had sexual intercourse. Thereafter again after ten-twelve days, she met to applicant-accused at his house and he on the pretext of promise of marriage again forcefully performed sexual intercourse. It is contended that due to her sexual relations with applicant-accused, she became pregnant and she disclosed said fact to applicant-accused. However applicant-accused told that he intend to purchase new shop and has to do number of things during his life time, hence, they will marry after some time and the pregnancy can be aborted from doctor known to him. It is further alleged that after abortion in September-2019 applicant-accused

told that he is already married with one girl and it is a child marriage, but said girl is not residing with him and she is residing at Uttar Pradesh and he will obtained divorce from her.

3. It is further alleged that applicant-accused has taken a shop Uco Spa on rent basis. She was regularly meeting the applicant-accused in the Spa and he introduced her to his employees as his wife. Moreover, in Saloon he used to have forceful intercourse without her consent. It is alleged that, she was regularly refusing for sexual intercourse, but always he assured for marriage and had sexual intercourse with her. It is further contended that applicant-accused on pretext of loss in his business and for other problems used to take money from her. Upon inquiry by informant-victim for marriage, applicant-accused always told her after his business will flourish, he will get married with her. During the period November-2019 to November-2020, informant-victim gave him Rs.1,50,000/- and also a gold chain of 1.5 tolas and 2 gold rings. Applicant-accused assured to return the amount and those ornaments, but he has never returned the same. In July-2020, informant-victim's parents came to know about her relationship with applicant-accused and after some days informant's family members gave consent for marriage. Then informant-victim and her family members started enquiring with applicant-accused for marriage, but he started avoiding. It is contended that thereafter applicant-accused took the informant-victim with him in Saloon where she resided for 10 days with applicant-accused and after informant-victim's father convinced her, took her back to the house.

5. It is contended that in December 2020 applicant-accused stopped his business and hence, informant-victim made demand of amount and ornaments, but he assured to return but has not returned the same. It is further alleged that thereafter applicant-accused was taking her in lodges at Powai and Vihar Lake and forcefully keeping sexual relations with her. It is contended that on 2.7.2021, applicant-accused called her at Lokhandwala Back Road and when informant-victim inquired him about her marriage, he created quarrel and started assaulting her on the road and refused to marry. It is further alleged that when she told him that she will lodge report to the police station, he told that he will disclose about her relationship with him and defame her in the society. On 28.6.2021, she lodged report at Meghwadi police station and as the incidents is of Powai, Vihar and Oshiwara jurisdiction, said complaint was referred for further investigation to police station, Oshiwara vide registration CR No '00'. After receipt of the said complaint from police station Meghwadi, crime came to be registered as CR No.590/2021, under Section 376(2)(n), 406, 420, 323, 506 of IPC.

6. Prosecution filed say at Exh.2 and resisted the application.

7. Heard Ld.Advocate Shri V.K.Dubey for the applicant-accused and Ld.Addl.PP Shri Mahajan for the prosecution. Perused the investigation papers.

8. Intervener-informant also appeared before the court and made submission that she do not want to engage any advocate.

9. Ld.Advocate for applicant submitted that applicant-accused is falsely implicated and informant-victim voluntarily engaged in relationship with him having knowledge that he is married.

10. On consideration of the FIR and submissions and incidents narrated in the FIR considering age of the informant-victim and her profession, it could be well concluded that there was consensual relationship of informant-victim and applicant-accused. It is pertinent to note that, subsequently she has given statement before the police station and submitted that she is called to record her statement under Section 164 of Code of Criminal Procedure before Ld.Metropolitan Magistrate at Bandra, but she is not intended to proceed with the matter and hence, she has filed an affidavit before police sworn on stamp paper of Rs.100/-. It is affirmed that parents of informant-victim are arranging her marriage with a boy from her community and therefore, she does not want to continue with the matter. Even otherwise, considering consensual relationship, in my humble opinion, it is not a case in which custodial interrogation is necessary. Therefore, by imposing conditions, it is proper to grant anticipatory bail to the applicant-accused. Hence, I pass following order:

ORDER

1. Anticipatory Bail Application No.959 of 2021 is hereby allowed.
2. In the event of arrest, applicant-accused Shri Vinod Shyam Giri, in connection with CR No.590/2021, registered with Police Station, Oshiwara, for the offences punishable under Section 376(2)(n), 406, 420, 323, 506 of the Indian Penal

Code, he be released on executing PR Bond of Rs.25,000/- (Rs.Twenty five Thousand only) and in the like amount with one surety.

3. Applicant-accused Shri Vinod Shyam Giri shall report to the police station, Oshiwara from 27.8.2021 to 30.8.2021 in between 11.00 a.m. to 1.00 p.m. and shall co-operate to the Investigating officer.
4. Applicant-accused Shri Vinod Shyam Giri is also directed to co-operate the investigating officer as and when required.
5. Applicant-accused Shri Vinod Shyam Giri shall not tamper the evidence.
6. Anticipatory Bail Application No.959 of 2021 stands disposed off accordingly.

25/08/2021

(Sridhar M. Bhosale)
2nd Addl. Principal Judge
Sessions Court,
Dindoshi, Mumbai.

Date of dictation : 25/8/2021
Date of transcription by steno : 25/8/2021
Put up before P.O. for signature on : 25/8/2021
Signed on : 26/8/2021

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."

UPLOADED ON 26.8.2021
AT 2.40 P.M.

Mrs.S.A.Kapare
H.G.STENOGRAPHER

Name of the Judge (with Court Room No.)	HH The 2 nd A.P.J. Shridhar M. Bhosale, C.R.No.1
Date of Pronouncement of Judgment/Order.	25.8.2021
Judgment/Order signed by P.O. on	26.8.2021
Judgment/Order uploaded on	26.8.2021