

**In the court of the Additional Sessions Judge, Thane
(Presided over by Shri. Rajesh S. Gupta)**

**Order Below Exh.1 A.B.A. No.1128/2022
(Order dt. 05/04/2022)**

...Applicant/accused

- Versus -

The State of Maharashtra

...Respondent

Appearance

Shri.Valinjkar Ld. Advocate for the applicant/accused.

Shri. V. A. Kulkarni for the respondent.

Defacto complainant present inperson.

Shri. Sagar Kadam Ld. Advocate for the intervener.

1] Applicant/accused has preferred anticipatory bail application U/ Sec. 438 of Cr.P.C. apprehending his arrest in C.R. No.0102/2022 for the offences punishable U/Sec. 420, 465, 467, 468, 506 of Rabale Police station.

2] Interim protection was granted to the applicant /accused. Ld.Adv for applicant/accused submitted that applicant-accused has regularly attended police station as directed by this Court and co-operated in investigation.

3] Ld. advocate for applicant/accused submitted that defacto complainant and applicant/accused are husband and wife. Marriage between them was solemnised on 20/11/2021, after various meetings between the couple. Profile of complainant was uploaded on social media on Saptapadi.com and the same was accepted by applicant/accused and the family members of both the sides. It is their submission that allegations are false and

baseless on the count of cheating and fraud played by applicant /accused prior to the marriage.

4] It is their submission that during the period of marriage, applicant/accused was working and thereby earning around Rs. 8 Lakh per annum and as there were bright chances of increments in near future. Accordingly the defacto complainant accepted and agreed the job profile of the applicant/ accused and marriage was performed by mutual consent. It is their further submission that the allegations are vague only with intent to harass applicant /accused and defame in the society. Applicant /accused is served with notice U.Sec. 41(A) of Cr.P.C., hence, applicant/accused has grave apprehension that on false allegations he will be arrested .

5] It is further submission that only with intent to put applicant/accused behind bar, false complaint is lodged. Applicant /accused has a fixed place of residence and hence, be protected from being arrested.

6] On the other hand IO filed their say below exh.6. Ld. APP submitted that there are specific allegations that applicant /accused suppressed the material facts before the marriage as he being gay and indulged into homo sexuality and thereby committed cheating and played fraud on the complainant and has ruined the life and future of the complainant and was not interested in opposite sex.

7] IO is present before the Court with a case diary and submitted that there are chat messages between the applicant /accused and his other male partners which clearly indicates the applicant /accused was interested in same sex. It is further submitted that the applicant/accused was also suffering from contagious disease known as parianal warts and the same was suppressed before the marriage. Investigation on the aspect of bogus job offer letter which was shown by applicant/accused to the complainant to impress her and agree for marriage is also to be investigated. Applicant /accused if released on anticipatory bail, will not be available for investigation and threaten the witnesses. Physical interrogation of applicant/accused is necessary and hence, prayed to reject bail application.

8] Original complainant is present before the Court alongwith her advocate. It is submitted that the applicant by suppressing the incriminating facts before the marriage was only interested in financial assistance from the parent of defacto complainant caused wrongful loss to Lakhs of rupees. The marriage expenditures were around Rs.18,90,000/- and other expenditures for purchase of gold ornaments. Parent of applicant /accused were put to huge financial loss and has to suffer mental agony in the society and hence, committed cheating.

9] Heard the rival contentions of parties, the following points arise for consideration:-

No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applicant/accused is entitled for relief as sought for ?	- In the negative
2.	What order ?	- As per final order, Application is rejected.

REASONS

As To Point No. 1 :-

10] It is consciously taken note Hindu Marriage is a religious sacrament in which a man and a woman are bound in permanent relationship for a physical, social and spiritual purpose of Dharma, procreation and sexual pleasure.

11] The method of reasoning of such a hallowed character was to make the companion Truly, Mystically and Profoundly joined together. Along these lines marriage is a relationship for life here what is more a gainful of full association with worldly and divine rights and obligations.

12] I have carefully perused the complaint, marriage between couple was solemnised on 20/11/2021 as per their rights and rituals. It is worth to be taken note that the profile of complainant was uploaded and registered in a Social media namely Saptapadi Maratha Vadhu -Var Mandal. The profile of complainant was accepted by the applicant/accused and by their mutual consent the marriage was performed.

13] In the instant case the marriage between the couple was solemnised only after both met with each other on several

occasions. There is an allegation as to during their meetings the applicant/accused displayed a bogus job offer letter thereby stating a salary was Rs.14,00,000/- p.a. As alleged this was one of the material aspect to impress the complainant for marriage on the bogus document.

14] The second issue as appears from the complaint soon after the marriage while the couple went for honey moon. It is alleged the applicant/accused avoided to consummate the marriage on the pretext of some disease and asked the complainant to change herself in according to applicant/accused. Other allegations are such that while they were staying together the complainant revealed some conversations on the mobile of the applicant/accused with his male friends discussing about their sexual life. Some photographs and videos were also uploaded in the mobile phone wherein the applicant/accused was indulging into telephonic sex with his male partners. It was further revealed the applicant/accused was gay and interested in homosexuality and therefore, till date he did not consummated a marriage with the defacto complainant and was disinterested in opposite sex.

15] It is further to be noted from the inception there appears a dishonest intention played by applicant/accused. Offence of Sec. 420 postitulates following ingredients :-

Firstly deception of any person,

Secondly fraudulently or dishonestly inducing such

person to deliver any property through any person,

Thirdly to consent that any person shall retain any property, inducing the person to do or omit to do anything which he would not do or omit, if he were not so deceived.

The dishonesty defines the expression whoever anything with intention of causing wrongful gain to one person or wrongful loss to another person.

16] As far as the allegations are concerned the complainant has made allegations as to applicant/accused has a sexual problem being homo sexual was interested in males and therefore, he never indulged into sexual act with the complainant and neither their marriage is consummated. The other allegations in regard to aspect of suppressing this fact and thereby accepting gold ornaments and valuable articles from the parent of de-facto complainant only with intent to cheat and commit fraud. It is further alleged due to the said behaviour of the applicant/accused the dispute between the couple and within three months they started staying separately.

17] It is obvious overall facts and circumstances of the case has to be carefully perused and taken care of while deciding such type of bail application. In the present case in hand, illustrations and in the case of **Arnesh Kumar V/s. State of Bihar**, **SCC(3)(2014) 449** those are not exhaustive of all conditions, which may warrant preliminary enquiry.

18] On carefully appreciating the allegations and perusing the documents such as chat messages, photographs which are part and parcel of investigation. Prima facie it appears the applicant/accused has suppressed the material fact of his private life before marriage and thereby caused a wrongful loss to the parent and the complainant.

19] It is worth to be noted that it is not only the financial loss but the whole life of a young girl has been spoiled by the material suppression. If this would have been openly shared prior to the marriage then the consequence would be different.

20] No doubt, every individual has its dignity to live in the society. No other person can interfere into life style but that does not mean that a person gets liberty to spoil the life of either of spouse. The damage which is caused to defacto complainant definitely it is irreparable and cannot be compensated into money terms.

21] Prima facie there appears fraudulent intention by suppressing material fact of his personal life before marriage and thereby blemishing the future of a young girl. It would be very early to discuss the meritorious aspect of investigation. Investigation is in progress. Prima facie it is shown applicant /accused with intent to play fraud, committed cheating by causing wrongful financial loss to the parent of complainant and as well as irreparable damage to the life of complainant.

22] Taking into consideration the principles laid down in **Gurubux Singh's Sibia and others V/s. State of Punjab**. The provisions of Sec. 438 of Cr.P.C., should not be suspected as containing something sensitive, which needs to be handle with great care and caution. Anticipatory bail is a device to secure individual's liberty, it is neither passport to the commission of crimes nor a shield against any and all kinds of accusation likely or unlikely.

23] There are possibilities at the stage, if released on bail will tamper the evidence. Hence, applicant /accused has not made out case for pre-arrest bail. His physical interrogation is necessary. It is made clear the observations made herein are for the limited purpose for deciding present application, it shall not have effect on merits of the case. On the above said observations, considering the facts and circumstances, I am inclined to pass the following order :-

O R D E R

1] Anticipatory Bail application No.1128/2022 filed by applicant /accused in C.R.No.I-0102/2022 registered with Rabale PS is hereby rejected and interim protection granted to the applicant/accused is hereby vacated.

2] Inform concerned police station accordingly.

Sd/-

Thane
Date :-05/ 04/2022

(Rajesh S. Gupta)
Addl. Sessions Judge, Thane