

Order below Exh.1 in Bail Application No.1644/2023.

{ Yagin @ Jurgan Maxwel Roze Vs. State }

This is an application under section 439 of the Criminal Procedure Code for grant of bail.

2. The applicant-accused is arrested on 31.7.2023 in CR I-200/2023 registered with Indiranagar Police Station under section 376, 376(n), 417 of the Indian Penal Code.

3. Perused the application and say of I.O. Heard both the sides. Original complainant is present.

4. The applicant contend that complainant is 24 years old educated adult and working in the company. She was cohabiting in his house at Nashik from 22 days with the permission of his family member. So also they were having love relation. The complainant four months ago at Thane with her consent established sexual relation with him. Thereafter, every week on holiday she would come to the house of applicant to meet him and they would establish sexual relation. They had consensual relation is clear from complaint and he never denied marriage to her. He has not committed any offence. He is innocent.

It is further submitted by the advocate for applicant that complainant faught with her parents and also lodged NC No.957/2023 U/s. 323 of IPC on 19.6.2023 against her parents. She came to Nashik to the house of applicant. Applicant's mother tried to give her understanding and also took her back to her parents house. But as the complainant was adult the police also could not do anything. Thereafter the applicant and his mother on 21.7.2023 took the complainant to Vasai Police Station but her parents refused to take her

back. The applicant is from Christian family and he has only given shelter to the complainant as she left home after quarreling with her parents.

It is submitted that, he be released on bail. Investigation is almost over.

5. Ld. APP and original complainant has strong objection for bail. It is submitted that, the applicant was establishing sexual relation with her in his own house and his mother was aware, she was also doing household work in the house of applicant. The applicant and his mother thereafter removed her out of the house and denied marriage after having repeated sexual relation with her.

Complainant submits that on the pretext of marriage and by false assurance that it will take one month notice period for them to do civil marriage, applicant called her to reside in his house. His mother also accepted her. They were having sexual relation and one fine day she is assaulted and removed out of the house.

Investigation is not over. The offence is serious. It is seen that both were in love relation and were working in the same company. The company close and the applicant came to reside at Nashik. The complainant left her parental house at Thane and came to reside with him and his mother at Nashik. She was accepted by the applicant and his family. After establishing repeated sexual relation with her in the house of applicant, without taking any step to marry, he removed her out of the house only because she was insisting for marriage.

Advocate for applicant relied upon judgment of Hon'ble Supreme Court, **Ansaar Mohammad Vs State of Rajasthan and anr, 2022 LiveLaw (SC) 599**, in which it was observed that complainant has willingly being stay with applicant and had relation. Now if their relation were not working, the same cannot be a ground for lodging

an FIR for offence U/s. 376(2)(n) of IPC.

6. In our matter the applicant and complainant were knowing each other and had sexual relation due to love. Thereafter, She has left her parental house and started living in the house of applicant at Nashik with his mother. She was accepted by the family of applicant who were aware of the relationship. The complainant is a young unmarried lady who was living with the applicant and his mother, keeping sexual relation in their house because the applicant was to marry. Suddenly the applicant removed her out of the house on the ground that she was only given shelter in his house and there is no question of marriage. It is clear that the applicant has no intention to marry her. There is no valid reason not to marry when he was enjoying sexual relation with her in his own house. The complainant has therefore filed FIR. In my view such conduct of the applicant cannot be taken lightly. The investigation is not over. Hence, I find fit not to grant bail and pass the following order.

ORDER

1. Bail Application is hereby rejected.
2. Inform the concern police station.

Date: 08.08.2023.

(Smt. Priti Kumar Ghule)
Additional Sessions Judge-5,
Nashik.