

2022 LiveLaw (SC) 599

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
HEMANT GUPTA; J., VIKRAM NATH; J.**

14th JULY, 2022

CRIMINAL APPEAL NO.962 OF 2022 (@ SLP(CRL.) No.5326 OF 2022)

ANSAAR MOHAMMAD versus THE STATE OF RAJASTHAN & ANR.

Indian Penal Code 1860; Section 376(2)(n) - Offence of committing repeated rape on same woman - The complainant has willingly been staying with the appellant and had the relationship - Now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC - Observations while granting anticipatory bail to accused.

(Arising out of impugned final judgment and order dated 19-05-2022 in SBCRMBA No. 5890/2022 passed by the High Court of Judicature for Rajasthan at Jaipur)

For Petitioner(s) Mr. Arjun Singh Bhati, AOR

For Respondent(s) Mr. Himanshu Sharma, AOR Ms. Aditi Sharma, Adv. Mr. Seeta Ram Sharma, Adv. Mr. Ram Niwas Sharma, Adv. Mr. Vinay Kumar, Adv. Mr. Sandeep Singh, Adv. Mr. Saurav Arora, Adv.

ORDER

Leave granted.

The challenge in the present appeal is to an order passed by the High Court on 19.05.2022 whereby, an application for pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 for the offences under Sections 376(2)(n), 377 and 506 IPC was dismissed.

It is the admitted case of the complainant that she was in a relationship with the appellant for a period of four years. It is admitted by Mr. Himanshu Sharma, learned counsel for the respondent No.2/complainant that when the relationship started, she was 21 years of age.

In view of the said fact, the complainant has willingly been staying with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC.

Consequently, we allow the present appeal and set aside the order of the High Court.

The appellant is ordered to be released on bail to the satisfaction of the competent authority.

It is made clear that the observations in the present order are only for the purposes of deciding the pre-arrest bail application. The investigation shall proceed uninfluenced by the observations made in the present order.

Pending application(s), if any, also stand disposed of.