

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 287 OF 2003

SHRI SAMEER DESAI,MARGAO-GOA.

....Applicants

Versus

STATE, THROUGH THE POLICE
INSPECTOR,MARGAO-GOA.

....Respondents

SHRI ARUN BRAS DE SA,MRS.WINNIE COUTINHO,APP

Coram:- A.M.KHANWILKAR, J.

Date:- 30th December, 2003

P.C.:

Heard Mr. Arun Bras de Sa for the
Applicant and Ms.Winnie Coutinho for
the State.

Investigation papers were produced
before me. On perusing the papers, at
this stage I am not inclined to
entertain the anticipatory bail
application filed by the Applicant in
relation to Crime No.365/2003 under
Section 376 of I.P.C., Section 8 of
Goa Childrens Act, 2003 and Section 5 of
Immoral Traffic (Prevention) Act, 1956
in view of the record presently availabl
e. Not a case for anticipatory bail. It
will however be open to the Applicant to
move for regular bail as and when the
occasion arises and if so advised. That
application will be considered on its
own merit, uninfluenced by the

observations in this order or the order passed by the Lower Court.

Suffice it to mention that the fact regarding happening of the incident on 28th August, 2003 is not in dispute.

That has happened at the residence of the applicant and he has been named by the Prosecutrix as well as the Applicant has broadly accepted that position in the statement recorded before the Police, although the statement of the applicant so recorded by the Police is not the basis for deciding the matter in issue. Accordingly this application is rejected.

Mr. D'Sa submits that even if this anticipatory bail application is rejected, that necessarily would not require arrest of the Applicant.

Reliance is placed on the decision reported in (2003) 2 S.C.C., 649 in the case of M.C. Abraham and Another v. State of Maharastra and Others to buttress this submission. That position is well settled and it is not the case of the respondent that as the anticipatory bail application is rejected, the Applicant should surrender on his own. Whereas, as and when the investigating agency thinks it necessary to exercise power to arrest under Section 41 or Cr.P.C. on sufficient reasons available in view of the settled legal position, that course can be

resorted to by the Investigating Agency.

A.M.KHANWILKAR, J.