



Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 734 OF 2023

Atul Ramchandra Patil ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Satyawrat Joshi, i/b Ashish Vernekar, for the Applicant.
Mr. Shrikant Yadav, APP for the State.
Ms. Megha Bajoria, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 12th OCTOBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.36 of 2023, registered with Chandgad Police Station, District Kolhapur, for the offences punishable under Sections 376(1), 366 and 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").
3. By an order dated 15th March, 2023, interim protection was granted to the applicant.
4. The first informant – respondent No.2 is a married lady. The applicant is her distant relative. The applicant allegedly had called the first informant to his house and taken some

photographs and sent those photographs on the Snapchat to the first informant. The applicant came to the house of the first informant, upon being called, to delete those photographs. There was a quarrel between the applicant and the first informant's husband. The first informant's husband also abused and assaulted the first informant over the said incident.

5. On 14th January, 2023, the applicant allegedly asked the first informant to leave her home alongwith gold ornaments and cash amount. As instructed, the first informant left her house at about 4.00 am. and accompanied the applicant's friend Vijay Gawade to Kolhapur. Thereafter, the first informant alleged, the applicant took her to various places and had forcible sexual intercourse with her by giving threat of making the photographs viral. Eventually the applicant asked her to lodge a report against her husband of harassment and the cruelty and, accordingly, she approached the police but did not disclose the true facts. However, on 29th January, 2023 after relating the alleged harassment and exploitation at the hands of the applicant to her mother, she lodged the report with the police.

6. The learned Counsel for the applicant submitted that the applicant and the first informant appeared to be in a relationship. The sexual intercourse was consensual. Offence

punishable under Section 376 of the Penal Code cannot be said to have been *prima facie* made out.

7. The learned APP submitted that in her statement under Section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate, the first informant reported the allegations in the FIR. It was submitted that the applicant has not surrendered the mobile phone handset which allegedly contained the objectionable photographs and the arrest of the applicant is necessary to facilitate his medical examination.

8. The learned Counsel for respondent No.2 also resisted the prayer for pre-arrest bail. It was submitted that the first informant had accompanied the applicant only on account of the threat administered by the applicant. Custodial interrogation of the applicant is necessary to recover the mobile phone handset which contains the objectionable photographs.

9. I have carefully perused the allegations in the FIR. The first informant as well as the applicant both appeared to be married. The allegations in the FIR that the applicant coerced the first informant to leave her matrimonial home by threatening to make the photographs viral are required to be appreciated in the backdrop of the allegations that the husband of the first informant had found the applicant and the first informant in their home and there was a quarrel over the

presence of the applicant in the house of the first informant between the first informant's husband and the applicant. Moreover, the first informant alleged that her husband had assaulted her on the said count.

10. In the face of this allegation, the contention that the first informant was forced to accompany the applicant's friend and the applicant to various places on account of the threat to make the photographs viral *prima facie* does not appeal to human credulity. Since the husband of the first informant had already known about the alleged liaison, the threat of making the photographs *prima facie* does not constitute a sustainable justification for leaving the matrimonial home alongwith articles at the dead of the night. Moreover, the first informant had opportunities to resist as well as get herself out of the clutches of applicant as there is an allegation in the FIR that the applicant had left the first informant alone to reside at PG House at Dharwad.

11. The material on record *prima facie* indicates that the first informant and the applicant were in a relationship outside marriage. The sexual intercourse appeared to be consensual.

12. For the foregoing reasons, I am inclined to exercise the discretion in favour of the applicant.

13. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.36 of 2023, registered with Chandgad Police Station, District Kolhapur, the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) The applicant shall cooperate with the investigation and attend Chandgad Police Station on 20th 21st and 22nd October, 2023 in between 10.00 am. to 1.00 pm.
- (iii) The applicant shall surrender his mobile phone handset and the applicant shall also make himself available for medical examination, if directed.
- (iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant any witness or any of the persons acquainted with the facts of the case.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.
Application stands disposed.

[N. J. JAMADAR, J.]