

ABA 1775/2023

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ORDER

MHCC050058482023



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 1775 OF 2023
C. R. No. 870 of 2023
(CNR NO.MHCC05-005848-2023)**

Rakhi D/o Anand Shankar Sawant

... Applicant/Accused

V/s.

The State of Maharashtra

.... Respondent

Ld. Adv Mr. Khan Deshmukh for the Applicant/Accused.

Ld. APP Mr. R. C. Savle for the State.

Ld. Adv Mr. S. I. Sharif for the intervenor.

**CORAM: H. H. The Additional Sessions Judge
Shri. Shrikant Y. Bhosale
(C.R.NO.9)**

DATE : 8th January, 2024

In anticipation of arrest in C. R. No. 870/2023 registered with Amboli police station under sections 500 r/w 34 of the IPC and Section 67(A) of Information Technology Act, the applicant has made this application for pre-arrest bail.

2. The prosecution vide say Exh. 2 resisted the application.
3. Heard Ld. Adv Khan Deshmukh for the applicant, Ld. APP Mr. R. C. Savle for the State and Ld. Adv S. I. Sharif for the intervenor.

4. The case of the prosecution in short is that the informant is ex-husband of the applicant. According to him the applicant in one TV show dated 25.08.2023 displayed her mobile phone containing sexually explicit material pertaining to the informant. The applicant allegedly showed two videos, one bearing 29 minutes and 25 second and another is 23 minutes and 22 second. The first information to that effect was lodged on 18.10.2023.

5. The Ld. Adv for the applicant vehemently submits that the character of the informant itself is in question, number of cases including the charges of the offence punishable under section 498(A), 376, 177 of the IPC are pending against him. He further submits that the alleged video-graph were recorded by the informant himself and therefore if section 67(A) is to be applied, then the informant is also an co-accused in the present case. He further submits that though the video was displayed, in fact the contents therein were not visible and therefore, it can not be said that there is infringement of law as contemplated under section 67(A) of the I.T. Act. Relying on the decisions of the Hon'ble High Court, it is submitted that there is difference between the ingredients of Section 67 and Section 67(A) of the I.T. Act. According to him, the sexually explicit material if transmitted through the Internet, then only Section 67 can be applied and said is not the case. He further submits that during the pendency of the application, the applicant has appeared before the investigation officer in response to the notice issued under section 41(A) of Cr.P.C. The applicant has been thoroughly interrogated and she has cooperated the investigation agencies and has also explained the true situation. The mobile phone was shown to the IO, but said was not seized, it indicates that custodial interrogation of the applicant/accused is absolutely not

necessary.

6. As against this the Ld. APP and the Ld. Adv for the intervenor Shri. S. I. Sharif submit that the first information clearly shows that the allegations of the prosecution is that the applicant has transmitted sexually explicit material. It is pointed out that the applicant not only displayed her phone containing the objectionable video in one TV show, but it is also alleged that the applicant shared the said videos on various Whats App group and also forwarded the links. Relying on the the following decisions between i) **Jaykumar Bhagwanrao Gore V/s. State of Maharashtra, reported in 2017 SCC OnLine Bom 7283**; ii) **Esrar Nazrul Ahemad V/s. State of Maharashtra, in Anticipatory Bail Application No. 1459 of 2022, dated 10th June, 2022**, he submit that the above act of the applicant clearly covers section 67(A) of IT Act.

7. It is his next submission that the investigation officer not only wants to seize the phone of applicant, but also the devices on which the applicant has stored the videos. According to the prosecution the applicant is in habit to engage herself in transmitting sexually explicit material and one of the actress had also filed complaint against the present applicant wherein the anticipatory bail to the applicant was rejected.

8. In reply the Ld. Adv for the applicant submits that though this Court has rejected the ABA of the applicant in previous case, the Hon'ble High Court had granted the anticipatory bail and the order to that effect is attached.

9. The Ld. Adv for the applicant firstly relied on the decision of the Hon'ble Bombay High Court between **Pramod Anand Dhumal**

V/s. **The State of Maharashtra, in Anticipatory Bail Application No. 1114 of 2020, dated, 7th January, 2021.** In the said decision the Hon'ble High Court has explained the difference between offence under Section 67 and Section 67(A) of the I.T. Act. According to it if publishing or transmitting material is obscene, then Section 67 is applicable and if the material which is transmitted or published in electronic form is sexually explicit, then Section 67(A) of the I.T. Act is applicable. Considering the facts in that case the Hon'ble Lordship held that Section 67 of the I.T. Act was applicable and as its punishment is up to three years pre-arrest bail was granted.

10. In the decision between **Dhiraj Gajanan Nagulkar V/s. State of Maharashtra, by the Hon'ble Bombay High Court, reported in 2022 SCC OnLine Bom 4204,** the anticipatory bail was granted to the applicant who was accused punishable under section 66(C), 67, 67(A) of I.T. Act mainly on the ground that the mobile phone of the applicant was already handed over to the investigation officer. In case between **Vaneet Sachdeva V/s. State of Punjab, by the Hon'ble High Court of Punjab and Haryana at Chandigarh, reported in 2023 SCC OnLine P & H 475,** the anticipatory bail was granted observing that there was no allegation that the disputed photographs and video were circulated amongst the general public. In case between **Roshan V/s. State of Kerala, by the Hon'ble High Court of Kerala in Criminal Bail Application No. 6392 of 2020, dated 13th October, 2020,** the Hon'ble High Court was deciding the bail application and not anticipatory bail. The ground for anticipatory bail and for regular bail are altogether different. The next decision relied by the applicant is between **Nidhi R. Sasi V/s. The State of Kerala, by the Hon'ble High Court of Kerala, in Bail Application No. 4768 of 2014, decided on 22nd July, 2014,**

the Hon'ble High Court granted anticipatory bail observing that custody of the petitioner not necessary for remaining investigation and that near about two years were over from filing the first information.

11. In light of the above when I perused the material in the present case, it is seen that the applicant has produced alongwith Exh. 5 the screen-short of the video which are allegedly transmitted or published by the applicant. On perusing the said it is seen that some of the screen-short are of kissing and some are of nude couple in bathtub. It is alleged that the applicant played video on her mobile phone in one T.V. show by name "Siddharth Kanan". The said show was transmitted. It is further alleged that the applicant circulated the objectionable material in the Whats App group. It is further alleged that the disputed photographs and the videos were shared by the applicant by providing the link.

12. If the allegations and the material allegedly transmitted or published by the applicant is concerned, I have no hesitation to hold that the material is not only of obscene but it is sexually explicit material.

13. It is further seen that previously also one case was filed against the present applicant alleging commission of offence punishable under section 67(A) of the I.T. Act. Thus, there is criminal antecedent. It is the argument of the applicant that she has participated in the investigation and has co-operated the investigation machinery. However, the investigation officer vide his say, has raised one of the objection that the devices used for transmission and storage of the disputed material, needs to be seized and admittedly the said devices are still with the applicant.

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14. In light of the above facts I find that the case laws cited on behalf of the applicant are not useful to grant relief in favour of the applicant. After all the relief of anticipatory bail is within the discretion of the Court and the Court has to grant or to refuse the said relief considering the facts and circumstances of a particular case. Having discussed the allegations and the facts and circumstances of the case I am of the view that this is not a fit case to grant relief of anticipatory bail. As I am going to reject the anticipatory bail, it is necessary to mention that the interim relief in favour of the applicant was granted. Thus, if the applicant want to approach the higher Court, it is necessary that the interim relief needs to be extended for a reasonable period. Hence, the order.

ORDER

Anticipatory Bail Application No. 1775 of 2023 stands rejected and disposed off. However, the interim relief to continue till 11/01/2024.

(Declared in open Court)

Date: 08.01.2024

(Shrikant Y. Bhosale)

The Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi

Dictated on : 08.01.2024

Transcribed on : 08.01.2024

Checked & corrected on : 09.01.2024

Signed on : 09.01.2024

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ORDER

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 09/01/2024 Time : 5.30 P.M. UPLOAD DATE AND TIME	Ms. Tejal C. Rane (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Shrikant Y. Bhosale (Court Room No.9)
Date of Pronouncement of JUDGMENT/ORDER	08.01.2024
JUDGMENT/ORDER signed by P.O. on	09.01.2024
JUDGMENT/ORDER uploaded on	09.01.2024