



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1160 OF 2023

Nitin Kisan Machale ... Applicant
versus
The State of Maharashtra & Anr. ... Respondents

Mr. Kuldeep Patil with Ms. Rekha Musale, for Applicant.
Mr. M.G.Patil, APP for State.
Ms. Devyani Kulkarni for Respondent No.2.
Ms. Aparna Sukhadev Jadhav, PSI, present.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 19 OCTOBER 2023
PRONOUNCED ON : 31 OCTOBER 2023**

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.174 of 2023 registered with Indapur Police Station for the offences punishable under Sections 341, 376, 506 of the Indian Penal Code.
3. When the application was listed before the Court on 24 April 2023, this Court was persuaded to grant interim protection while directing the applicant to co-operate with the investigation.
4. Heard Mr. Kuldeep Patil, learned Counsel for the Applicant, Mr. M.G.Patil, learned APP for State and Ms. Devyani Kulkarni, learned Counsel for Respondent No.2.

5. The first informant is a married lady. She had known the applicant as the house of the first informant is situated near the field of the applicant. On 6 February 2023 at about 4.30 p.m., while the first informant was on way to her home from the field, the applicant accosted her. The applicant caught-hold the left hand of first informant and dragged her to the nearby sugarcane field. The first informant claimed that the applicant despite her resistance had a forcible sexual intercourse without her consent. After the act, the applicant threatened the first informant not to disclose the incident to anybody lest she would be killed. The first informant returned home and after apprising her husband, lodged the report.

6. On the basis of the said report, a crime was registered as C.R.No.174 of 2023 on 6 February 2023 at 11.22 p.m. Within a hour and half of the said report, the applicant lodged a report while being admitted at Krishna Hospital and Research Centre at Indapur, that on 6 February 2023 at about 3.00 p.m., to the effect that while he was returning to his house at Avasari on a motorcycle, at Bhatningaon, one Mauli Dattatraya Khabale intercepted him. The said accused assaulted him by means of an iron rod. He sustained grievous injuries. He was brought at Krishna Hospital in an injured state. C.R.No.175 of 2023 was, thus, registered at Indapur Police Station for the offences punishable under Sections 326, 341, 504 & 506 of IPC on 7 February 2023 at 00.49 hrs.

7. Apprehending arrest, the applicant preferred this application. As noted

above, on 24 April 2023 this Court was persuaded to grant interim protection as it was submitted that the applicant was assaulted at about 3.30 p.m. and was hospitalized and, therefore, commission of rape was physically impossible.

8. Mr. Patil, learned Counsel for the applicant submitted that there is material to show that the applicant was admitted in Krishna Hospital at about 5.30 p.m. The applicant had sustained grievous injuries i.e. Grade I compound fracture proximal one-third tibia comminuted type, at right side. He was operated upon and was an indoor patient till 20 February 2023. In addition to the medical record which evidences the admission of the applicant at Krishna Hospital at about 5.30 p.m., with the alleged history of assault, there is a statement of the Doctor who had treated the applicant. The Medical Officer stated that on 6 February, 2023 the applicant was admitted in his hospital at about 5.30 p.m. and the patient had narrated history of assault and there were marks of injuries on his legs and back.

9. Mr. Patil would further submit that the applicant and the first informant were in a relationship, in the past. Attention of the Court was invited to the transcripts of the Whatsapp chats and the call records to bolster up a case that the first informant used to pester the applicant to continue the relationship.

10. In opposition to this, learned APP submitted that since the incident of sexually exploiting the first informant had occurred at about 4.30 p.m., and the applicant was admitted in hospital at 5.30 p.m., the submission now sought to be

canvassed that it was physically impossible for the applicant to commit the alleged offences is a matter of defence at the trial. At this stage, the statement of the first informant supported by the medico legal certificate and the statements of her husband and relatives, which corroborate her version, are sufficient. It was further submitted that the first informant has reiterated the allegations in her statement recorded under Section 164 of the Code of Criminal Procedure.

11. Ms. Kulkarni, learned Counsel for Respondent No.2 submitted that the applicant had not at all raised the contention that the relationship was consensual before the Court of Session. For the first time, before this Court certain documents are sought to be tendered to show that the applicant and the first informant were in a relationship. In any event, counter version set up by the applicant is a matter for trial as it is essentially the defence of the applicant. Having regard to the gravity of the offences, the applicant does not deserve the exercise of discretion, submitted Ms. Kulkarni.

12. The thrust of the submission on behalf of the applicant was that he was assaulted at about 3.00 p.m. at Bhatnimgaon, and, therefore, it was not possible for him to commit the alleged sexual exploitation of the first informant at about 4.30 p.m. A case was sought to be urged that the assailant against whom the applicant lodged a report took advantage of the relationship between the applicant and the first informant and made the latter to lodge false FIR. In the application, the applicant asserted that

Mauli Dattatraya Khabale is the cousin / relative of the first informant.

13. It would be contextually relevant to note that in the FIR lodged by the applicant, the cause of the dispute between the applicant and Mauli Dattatraya Khabale was ascribed to be that of non-payment of the repair charges by the said Mauli Dattatraya Khabale. The first informant, evidently, does not come in the frame in the FIR lodged by the applicant.

14. It is well recognized that the version of the prosecutorix, if found reliable, does not require corroboration. In the case at hand, the statements of the husband and relatives of the first informant are in tune with the version of the first informant. She has reiterated the allegations of forcible sexual intercourse without her consent in her statement recorded under Section 164 of the Code. The medico legal examination report also lends prima facie support to the claim of the first informant. Marks of injuries and scratches were found on the person of the first informant over chest, left forearm, iliac and groin region. Prima facie there is material which lends support to the version of the prosecutorix.

15. Ms. Kulkarni, learned Counsel for the first informant was justified in canvassing the submission that it was not the case before the Court of Session that the relationship was consensual. I have perused the copy of the application filed before the Court of Session. There is no whisper about any relationship between the applicant and the first informant.

16. In this view of the matter, the question that wrenches to the fore is whether the version of the prosecutorix can be discarded at this stage on the basis of the claim that she had lodged the FIR at the behest of Mr. Khabale. It is not alleged the quarrel, in which the applicant was assaulted, was between the applicant and immediate family members of the first informant.

17. At this stage, it would be rather difficult to accede to the submission that at the behest of a distant relative, the prosecutorix would stake her reputation by making the allegations of rape against the applicant. Even otherwise, the endeavour made on behalf of the applicant to place on record transcripts of the conversation between the applicant and the prosecutorix, which took place in the past, is of no avail as it is not the case of the applicant that the alleged act was consensual. Had it been a case that the applicant and the prosecutorix were found in a compromising position and, thereupon, the applicant was assaulted and the prosecutorix took a somersault, different consideration could have come into play.

18. The submission that the applicant was admitted at Krishna Hospital and Research Centre at Indapur at 5.30 p.m. and that rules out the commission of the alleged offences by the applicant is required to be appreciated in the light of the fact that the CDR revealed the presence of the applicant at Bhatnimgaon at 4.00 p.m. At about 5.00 p.m., the location of the applicant is shown at Indapur. Indeed, there is material to show that the applicant was admitted in the hospital at about 5.30 p.m. It

is trite, to successfully establish the defence of alibi, the accused should be able to demonstrate that it was physically impossible for the accused to be present at the place of occurrence and another place where he is found, at the same time. As the CDR revealed the presence of the applicant at Bhatningaon at about 4.00 p.m., and the first informant alleges that she was sexually exploited at 4.30 p.m., prima facie, the said ground does not advance the cause of the applicant.

19. The case of the applicant thus ultimately boils down to the instant FIR being lodged by the first informant to preempt an action by the applicant against the relative of the first informant who had allegedly assaulted the applicant. In the totality of the circumstances, prima facie, there is adequate material to lend credence to the version of the prosecutorix. FIR came to be lodged by the prosecutorix within six hours of the occurrence and before the applicant lodged the FIR. The delay cannot be said to be inordinate. The motive attributed to the first informant, prima facie, does not merit acceptance.

20. For the foregoing reasons, I am not inclined to exercise the discretion in favour of the applicant.

21. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) Interim protection granted earlier stands vacated.

(iii) It is, however, clarified that the observations are confined to the consideration of entitlement for pre-arrest bail and the trial Court shall not be influenced by any of the observations in further proceedings.

(N.J.JAMADAR, J.)