

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Application No.2354 of 2015
In
Criminal Application No.37 of 2015
Criminal Application No.38 of 2015
Criminal Application No.1305 of 2015
And
Criminal Application No.1806 of 2015**

Abhijit s/o Rajesh Kothari.

.. Applicant.

Versus

Sarita D/o Shesrao Sable
And Another.

.. Respondents.

Shri. Uday S. Malte, Advocate, for applicant.

Shri. Sudharshan J. Salunke, Advocate, holding for Shri.
G.J. Pahilwan, Advocate, for respondent No.1.

Shri. K.M. Suryawanshi, Additional Public Prosecutor, for
respondent No.2.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 29th APRIL 2015

ORDER:

1) The main proceedings are filed for cancellation of relief of anticipatory bail and quashing of FIR etc. The application is filed by Abhijit Kothari and he has given his occupation as Advocate. Against him two crimes are

registered. One is for offence of rape on the basis of report of Sarita Sable and other is for abetment of suicide of husband of sister of Abhijit. He has produced some record like communication made by prosecutrix with him on WhatsApp application. He is very particular about one communication in which Sarita had written to Abhijit Kothari that she was 125% sure about cancellation of the anticipatory bail granted in favour of Abhijit Kothari by Sessions Court.

2) Learned counsel Shri. Uday Malte submitted that in one case Abhijit Kothari was accused and that case was filed for offence punishable under sections 306, 34 etc. of the Indian Penal Code and anticipatory bail was refused to him by High Court. Advocate Shri. Uday Malte submitted that Justice T.V. Nalawade had refused relief to him.

3) On the basis of the aforesaid communication made by Sarita, present application is filed by Abhijit Kothari and has requested to this Court (Justice T.V. Nalawade) to recuse himself from the present matter. Learned counsel Shri. Malte placed reliance on a case

reported as **(2008) 3 SCC 659** between **Kulwinder Kaur and Kandi Friends Education Trust**. Learned counsel submits that what the party feels is important and so Justice T.V. Nalawade should recuse from the present matter.

4) It is not proper thing and it is very unfortunate that some times some parties or even some counsels want to see that particular matter does not come before particular Judge. They think that as in past in similar matter bail was refused, in subsequent matter similar order is likely to come out. Parties play many tactics in such cases. Present matter cannot be said to be different from such tactics. It is unfortunate that such tactics are played even when the applicant Abhijit himself is an Advocate.

5) This Court allowed learned counsel Shri. Uday Malte to make submission in open Court in the presence of Advocates and the parties to tell the grievance he has and his client has as against Justice T.V. Nalawade. The applicant who is an Advocate has filed the application on aforesaid ground and it can be said that by playing such

tactics he wants to pressurise the Judges. If Judges succumb to such tactics and recuse themselves from the matters such tendency is bound to develop more and more applications will be pouring in and it will be virtually impossible for the Judges to work. For a Judge it is not easy to say "Not before Me" and the Judge cannot recuse himself from any matter because to one side, other side allegedly made such communication. The Judge has to discharge his duties sincerely and he cannot be allowed to avoid any matter. Justice T.V. Nalawade does not want to avoid matter on such ground. Justice T.V. Nalawade will not recuse from the present matter.

6) The application is disposed of. Learned counsel to argue the main matter.

7) Learned counsel for the applicant seeks time to challenge this order. It is again a tactic played because we are at the verge of vacation and in these circumstances the applicant wants to avoid to argue the matter. The request is rejected.

Sd/-
(INDIRA K. JAIN, J.)
 rsl

Sd/-
(T.V. NALAWADE, J.)