

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

ANTICIPATORY BAIL APPLICATION NO. 428 OF 2016

Inayat Abdul Majid Hurzuk ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Rizwan Merchant, Advocate i/by Amin Solkar, Advocate for the Applicant.

Mr. Deepak Thakery, A.P.P. for the Respondent – State.

Mr. Ashraf A. Shaikh, Advocate for the Intervenor.

API-Ms.Pranjali N. Sonawane (Mahad Vibag,Raigad) is present.

CORAM : A. M. BADAR, J.

DATE : 28th JUNE, 2016

P.C. :

1 The Applicant/accused in Crime No. 13 of 2016 for the offences punishable under sections 376, 328, 313, 506 of the Indian Penal Code and under section 67 of the Information Technology Act, 2000 registered with Mahad City Police Station, at the instance of the prosecutrix, by this application is seeking pre-arrest bail.

2 Heard the learned counsel appearing for the Applicant/accused at a sufficient length. By taking me through the entire FIR, it is argued by the learned counsel for the applicant that the incidents in question allegedly happened in

November, 2014 and 25th December, 2015, however, the report thereof is lodged belatedly on 18th February, 2016. The FIR came to be registered on 19th February, 2016. Learned counsel further argued that the prosecutrix alleged that she was aborted against her wish in February 2015 by the present applicant but from the letter dated 14th April, 2015 issued by the Manik Hospital, it is seen that the prosecutrix was accompanied by one person allegedly shown to be her husband and his name is stated in that certificate as "Asham Jagtap". According to the learned counsel for the applicant / accused, the prosecutrix is associated with one Santosh Jagtap who had even sent friend request to the daughter of the applicant. It is argued that many cases are registered against said Santosh Jagtap. It is further argued that photocopy of the Instagram account of said Santosh Jagtap and the prosecutrix would reveal a different story and at the behest of Santosh Jagtap, an attempt is being made to falsely implicate the present applicant in the crime in question. The entire case of the prosecution in respect of allegations of rape at different places is unbelievable. It is further argued that the applicant has already surrendered two cell phones to the police and the photo album is also seized from his house. According to the learned counsel for the applicant it was the job of investigator to ascertain tower location of the applicant as well as the informant on the date of alleged incidents. Reliance is placed by the learned counsel for the applicant on the order dated 9th

June, 2016 passed by this court in ABA No. 1415 of 2016. The learned counsel for the applicant in the alternative argued that even if it is assumed that there were some relations between the applicant and the informant/prosecutrix then also it indicates a consensual sex rather than forcible sexual relations. For this purpose, reliance is placed on order dated 12th March 2014 passed by this court in ABA No. 27 of 2014 with Cri. Intervention Application No.179 of 2014 as well as the judgment of the Hon'ble Supreme Court in the matter of **Tilak Raj vs. The State of Himachal Pradesh**, reported in 2016 SCC OnLine SC 11.

3 As against this, the learned APP opposed the application by contending that tower location of cell phone of the prosecutrix as well as the applicant goes to show that at the time of the incident they both were present at Mahad. Learned APP further argued that version of the informant in her supplementary statement is corroborated by the statement of the Milkman, recorded by the Investigating Officer. He further argued that there is prima facie evidence in support of the averments in respect of the incident at Hotel Vyankat Residency Lodge, as stated in the FIR.

4 I have also heard the learned counsel for the informant, who argued that the cell phones submitted by the

applicant to the Investigating Officer are not the cell phones from which video clippings were made by the applicant.

5 The FIR registered on 19.02.2016 on the basis of the statement of the prosecutrix goes to show that she is well acquainted with the present applicant, who appears to be her distant relative. The prosecutrix alleged that on the pretext of extending help in education, the applicant called her near the lake at Mahad in November, 2014 and when she sat in his four wheeler vehicle bearing no. MH-06/BE-6162, a spiked drink was offered to her. She became unconscious after drinking that spiked cold drink. As per version of the prosecutrix, on regaining conscious she found herself to be in naked condition with pains at her private parts. Upon questioning, the applicant informed her that he has taken video recording of his act of committing rape on her. According to the prosecutrix, on the strength of this video clips, she was sexually exploited by the applicant/accused from time to time. The informant averred that on 25th December, 2014 on the pretext of deleting said video clipping from the cell phone, the applicant/accused had again committed rape on her at Vyankat Residency Lodge at Kamothe, Panvel. The informant averred that a threat was extended to her that the applicant/accused would make video clipping viral. The informant further averred that against her consent, she was aborted in February, 2015 at some hospital by the present applicant/accused. In her supplementary

statement, the informant further averred that the applicant/accused had committed rape on her at the house of her aunt.

6 In order to test the argument of the learned counsel for the applicant that the applicant was not in any way concerned with the present informant, let us go through the pleadings in the instant application. In para-7 of the instant application, the applicant/accused has made following averments :

“7. The Applicant states that somewhere in the last week of December, 2014, probably on 25.12.2014, the said complainant had called on his cell phone and told him that she required some financial help to pay off the arrears of rent of her flat and request him to meet her at Kharghar junction. The Applicant states that without doubting her bonafides, he met her at Kharghar junction and handed over the money to her. After talking for some time in his car, the Applicant was enticed by the said complainant to accompany her at Hotel Vyankat Residency for a physical relationship with her. The Applicant states that after checking into the room, since the said complainant demanded an exorbitant amount, he refused to go in for any such physical relationship with her and left the hotel room telling her in clear terms not to contact him in future.” .

Thus according to the version of present applicant/ accused, it was the informant who had called him at Kharghar junction and then it was the informant who enticed the applicant to

accompany her at Hotel Vyankat Residence, Kamothe for physical relationship with her. The applicant further contended in this application that he accompanied the informant in the room of that hotel but as informant demanded exorbitant amount, he left the room. This averments in this application does not allow me to infer, prima facie, that the applicant was in no way concerned with the informant and the crime in question is registered by the informant only at the instance of one Santosh Jagtap.

7 During the course of investigation, the investigating officer has collected CDRs and prima facie it is found by the Investigating Officer that location of the applicant/ accused was at Mahad on 3rd November, 2014. During investigation, the Investigating Officer has also found material to show that on 25th December, 2014, it was the present applicant who booked a room for two persons in Hotel Vyankat Residency Lodge. This material corroborates the version of the prosecutrix about commission of rape on her by the applicant. Prima facie no element of consensual sex is revealed from the record of investigation.

8 So far as the incident of alleged termination of pregnancy is concerned, during the investigation it was found that there was termination of pregnancy of the informant at Manik Hospital. Merely, because the name of husband of the

informant is recorded as Jagtap, version of the prosecutrix cannot be disbelieved to infer that the applicant is falsely implicated. The statement of milkman recorded by the investigating officer shows that the present applicant/accused as well as the informant were present in the house of the aunt of the informant at Nerul, Navi Mumbai. The prosecution alleges rape by the applicant at this place also.

9 In sexual offences the broader probabilities of the prosecution case are required to be kept in mind. Mere delay in lodging FIR at this pre-trial stage is of no consequence. The informant categorically stated that on the pretext of providing financial help the applicant/accused allured her and by offering her spiked cold drinks, she was raped by the applicant/accused and thereafter, on the pretext of deleting the video clips, she was repeatedly raped by the applicant/accused.

10 Considering the nature of the allegations against the applicant, no case for pre-arrest bail is made out. The application deserves to be rejected. It is rejected accordingly.

(A. M. BADAR, J.)

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