

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

ANTICIPATORY BAIL APPLICATION NO. 965 OF 2016

Shri Sagar s/o. Dattatraya Sakhare ... Applicant.
(Org.Accused No.1)
V/s.

The State of Maharashtra ... Respondent.

**WITH
ANTICIPATORY BAIL APPLICATION NO. 966 OF 2016**

Smt. Swati w/o. Dattatraya Sakhare ... Applicant.
(Org.Accused No.2)
V/s.

The State of Maharashtra ... Respondent.

Mr. Shirish Gupte, Senior Advocate a/with Mr. M.S. Mohite & Mr. Pavan S. Patil, Advocate for the Applicant in ABA No. 965 of 2016.

Mr. A. P. Mundargi, Senior Advocate a/with Mr. S. V. Kotwal, Mr. Pavan S. Patil, Advocate for the Applicant in ABA No. 966 of 2016.

Mr. Deepak Thakarey, APP for the State in ABA No. 965 of 2016.

Mrs. R.M. Gadhvi, A.P.P. for the State in ABA No. 966 of 2016.

Mr. Rajesh More, Advocate a/w. Mr. Sugandh B. Deshmukh, Advocate for the Complainant.

CORAM : A. M. BADAR, J.

DATE : 13th JUNE, 2016

P.C. :

1 Both Applicants/Accused in Crime No. 209 of 2016 for the offences punishable under sections 307, 377, 498-A, 406, 323, 504, 506 read with section 34 of the Indian Penal Code, 1860, registered with Hinjewadi Police Station, Pune, Dist.Pune at the instance of informant Mrs. Apurva Sagar Sakhare, by their respective applications are praying for pre-arrest bail. Applicant-Sagar in ABA No. 965 of 2016 is the husband; whereas the applicant-Swati in ABA No. 966 of 2016 is the mother-in-law of informant-Mrs. Apurva.

2 Heard learned senior counsels appearing for both the applicants. Their congruous submission is to the effect that soon-after marriage of Apurva with Sagar, their marriage life suffered a rough weather. According to the learned senior counsels, applicant-husband-Sagar had sent two notices to Mrs. Apurva : one is dated 03rd May, 2016 and another is dated 11th May, 2016, reflecting discord in their matrimonial life and requesting the informant -Apurva to opt for divorce by mutual consent. By taking me through the entire text of FIR, learned senior counsels argued that the averments made in the FIR are per-say false and the CCTV footage of the house of applicants goes to show that the informant was in company of her mother as well as uncle through out the night intervening 9th April,

2016 and 10th April, 2016. It was further argued that in fact applicant- Sagar had suffered harassment to such extent at the hands of the parental relatives of informant - Apurva that he was required to leave his house on 10th April, 2016 and that his mother - Swati was required to lodge a missing report of applicant-Sagar. After handing over the CDs of the CCTV footage to the prosecution on the earlier date, reliance is placed by applicants on various photographs taken out from the CCTV footage. According to applicants, the parental relatives of Mrs. Apurva are comprising of Zillha Parishad Member and MLA who are politically heavy weights, causing harassment to the husband and mother-in-law of Mrs. Apurva. According to applicants when the alleged victim was in company of her parental relatives in the night intervening 9th and 10th April, 2016, as reflected from the CCTV footage, it is humanly impossible for the applicants to attempt her murder and the delay in lodging FIR also reflects this fact. Photographs of the informant would prove the falsity of allegations that all ornaments were snatched from the informant.

3 As against this, the learned APP argued that the offence committed by applicants is serious and custodial interrogation of applicants is necessary. By pointing out the statements of informant's parental relatives, friends, as well as watchman, the learned APP submitted that version in the FIRs is well corroborated by version of these witnesses and as their

house was found locked, it cannot be said that applicants would be available for trial and/or receipt of sentence, if any, ultimately passed against them.

4 I have also heard the learned counsel appearing for informant-Mrs. Apurva. He relied on the judgment of the Apex Court in the matter of **Gajanan Agarwal vs. State of Orissa & Ors.**, reported in 2007 (3) Supreme 434, and argued that while dealing with the bail applications, the court should be satisfied that there is a prima facie case and this jurisdiction is to be exercised in a judicious manner. The order is required to reflect reasons for consideration of the nature of the accusation. The learned counsel argued that his client-Mrs. Apurva is running a pregnancy of three months duration and because of such traumatic incident there is delay in lodging the FIR. He argued that the medical case papers of the applicant -Sagar goes to show that his blood pressure and pulses were normal and, therefore, there was no cause for him to get himself hospitalized. Learned counsel further argued that the ornaments shown in the photographs were ornaments provided by parental relatives of Mrs. Apurva at the time when she attended marriages of other persons. According to the learned counsel, the custodial interrogation of the applicants is necessary for recovery of the laptop in the wake of allegations for the offence punishable under section 377 of the

Indian Penal Code and also for recovery of the gold ornaments.

5 I have carefully perused the case diary of the crime in question so also medical case papers of informant-Apurva vis-a-vis the FIR lodged by her on 10th May, 2016. Briefly stated, the prosecution case is to the effect that after solemnization of marriage of Apurva with Applicant-Sagar on 9th May, 2015, both applicants used to coerce her for bringing money from her parents as also other valuable articles and on that pretext they used to hurt and harass her. It is averred that once Mrs. Apurva was not provided food by the applicants for two days. According to the prosecution case, soon after marriage, after Pooja Ceremony, the applicants took out all the ornaments from the informant and she was not given those ornaments even at the time of Dipawali festival. Material allegations against the applicants are to the effect that they attempted to commit murder of informant Apurva on 16th January, 2016 and on 9th April, 2016. It is the case of the prosecution that on 16th January, 2016 when the applicants attempted to constrict the neck of the informant by means of her Odhani. That attempt failed as somebody rang the door bail at that time. Then according to the informant on 9th April, 2016 her uncle Ganesh, aunt Sujata and mother Kalpana had been to her matrimonial house for mediation in order narrow the differences between them. It is alleged by the informant

that on 9th April, 2016, in her bed-room, applicant-Sagar caught hold of her hands and applicant- Swati pressed her neck for murdering her. Informant-Mrs. Apurva alleged that as she shouted, her mother came at her bed room located on the first floor of the house and then her uncle Ganesh was called and that she was taken by them for medical treatment in the morning hours to the hospital named “Manisha Maternity & Nursing Home”, Vadgaon, Dist. Pune. Thereafter, on the next date she was taken to Primary Health Center, Talegaon. In addition, it is also averred that applicant-Sagar had indulged in carnal intercourse with her against the order of nature.

6 Informant-Apurva as per, submissions of her learned counsel, is running pregnancy of three months duration. In the light of this facts, let us, prima facie, look into the papers of her medical treatment at Manisha Maternity Nursing Home, where as per her version, she was taken for medical treatment after alleged attempt on her life by the applicants. The investigating officer has today produced the original papers of medical treatment of informant -Apurva. It is seen that she was admitted at Manisha Maternity Nursing Home, Vadgaon (Maval) Dist. Pune at 6.30 a.m. on 10th April, 2016 i.e. immediately after the alleged incident. Her medical case papers are conspicuously silent about her medico legal history, if any, which is routinely recorded by the doctor. If it was the medico legal case of an attempt to murder then

obviously such history ought to have been written by the Doctor in her medical case papers. It is interesting to note that as seen from the indoor case papers of Mrs. Apurva maintained by the said hospital, informant - Mrs. Apurva had in fact visited the said hospital because of nausea and vomiting with pain in abdomen since one month. Upon her medical treatment, the doctor diagnosed her ailment as "Hyper-Emesis Gravidareas". This makes it clear that because of morning sickness and vomiting, associated with the pregnancy, informant-Apurva was admitted to the Manish Maternity and Nursing Home on 10th April, 2016 at 6.30 a.m.. Case papers of this first hospital approached by the informant does not show that she went there to take medical treatment as applicants attempted to commit her murder. Thereafter, Mrs. Apurva is seen to have been admitted to the Rural Hospital, Talegaon Dabhade on 11th April, 2016 at 5.30 p.m., wherein for the first time, it is stated that she suffered assault at the hands of her husband on morning hours on 10th April, 2016. Name of applicant no. 2 is missing. Ultimately, this has come on record after 2 days which is also not in tune with the FIR. As per the FIR, in the mid-night an attempt was made by the Applicants on her life by pressing her neck. This is a relevant factor which prima facie, reflects that the averments in the FIR implicating applicants in a serious offence may not be true.

7 Be that as it may, even the Rural hospital has only noted that there is tenderness, around neck and difficulty in digestion. No external injury was found to have been suffered by the informant -Apurva.

8 In the wake of this medical record, prima facie, it is seen from the photographs and medical certificate of applicant - Sagar that he was admitted to Mehta Hospital, Mumbai from 8 p.m. to 12.00 midnight of 9th April, 2016 because of leg cramps, fainting, and chest pain. Photographs placed on record, prima facie, show that applicant -Sagar suffered a fall on 9th April, 2016 at about 7. 58 p.m. and was taken to the hospital. Other photographs from CCTV footage placed on record show that at about at 11.10 p.m. on 9th April, 2016, the informant was in company of her mother. It was argued on behalf of the applicants that other photographs show that at 00.22 a.m. on 10th April, 2016, applicant-Sagar returned to the house from hospital and parental relatives of the informant were very much present in his house. It was further argued that as seen from the photographs that at 00.52 a.m. of 10th April, 2016, applicant-Sagar was present in the dining hall of the house where informant - Apurva was sitting in company of her mother. By pointing out photographs, it was further argued that at 1.10 a.m. on 10th April, 2016, the informant and her mother went inside the ground floor bed room and they came out of that bedroom at 5 a.m. on 10th

April, 2016 and they left the house of the applicants at about 5.12 a.m. of 10th April, 2016. This material, prima facie, indicates that the possibility of false implication of the applicants cannot be ruled out.

9 The other material allegations in the FIR is regarding taking out ornaments from the persons of the informant immediately after the marriage. In this regard, the applicants are relying on photographs of the informant taken during the marriage ceremonies held on 20th December, 2015 and 24th February, 2016. Those photographs show informant - Apurva was wearing several ornaments. The learned counsel for the informant no doubt argued that those ornaments were not provided by the parental relative of Apurva. However, this aspect will have to be decided at the time of the trial. This court is considering the nature of evidence against the applicants at the very initial stage in order to ascertain where their liberty needs to be protected, keeping in mind the gravity of the allegations and evidence collected by the prosecution against them.

10 So far as recovery of the laptop in the wake of allegations for the offence punishable under section 377 is concerned, the same can be recovered without having the applicants in the custody.

11 The averments in the FIR are to the effect that the applicants used to beat the informant by asking her to bring money from her parental relatives. Details of such averments are also not reflected in the FIR as well as in statements of the witnesses in order to examine them in the light of explanation to Sec. 498-A of the I.P.C..

12 Taking overall view of the matter and particularly the nature of the allegations against the present applicants and the truthfulness of the same on comparing with the medical record collected by the prosecution, this court is of the opinion that liberty of both applicants needs to be protected and that their custodial interrogation is not warranted. Hence, the following order :-

ORDER

- i. Both the anticipatory bail applications are allowed.
- ii. The order dated 10th June, 2016, granting ad-interim anticipatory bail to both the applicants is hereby confirmed on the same terms and conditions.
- iii. In addition, Applicants/accused should attend Hinjewadi Police Station, Pune on 19th and 26th

June, 2016 in between 11 a.m. and 1 p.m. and they shall co-operate with the investigating officer.

- iv. The applicants should not tamper with the prosecution evidence in any manner and they should not commit offence of similar nature in future.
- v. In the event of filing of the chargesheet, the applicants should co-operate the trial court in expeditious disposal of the trial.
- vi. These anticipatory bail applications are disposed of accordingly.

(A. M. BADAR, J.)

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