

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

**ANTICIPATORY BAIL APPLICATION NO.1888 OF 2018
WITH
CRIMINAL APPLICATION NO. 1153 OF 2018**

Nirmalkumar Ajairaj Sottany

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.P.R. Yadav, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 8, 2018.

P.C. :

This is an application for Anticipatory Bail. The applicant is apprehending arrest in connection with C.R. No.311 of 2018, registered with Charkop Police Station. The offences were registered under Sections 506, 501, 509 read with 34 of Indian Penal Code ("IPC", for short), and, Section 67 of Information Technology Act ("IT Act", for short). Subsequently, section 67(A) of IT Act was added.

2 The prosecution case is that in May 2012, the complainant got introduced to accused no.1 in a family function. They exchanged their cell phone numbers. Thereafter both of them were talking to each other on cell phone and met each other. Accused no.1 put up a proposal of marriage with the complainant. However, the complainant had informed him that she would consult her parents and would take decision about the marriage. The accused no.1 had informed the complainant that he is in love with her and he wants to marry her. However, considering the behaviour of accused no.1, the complainant stopped interacting with accused no.1. In spite of that the said accused was sending messages to the complainant on her cell phone. Since the complainant had stopped conversation with the accused no.1, he started stalking her and sending obscene messages to her. He also threatened her that he would commit suicide. Hence, the complainant lodged the complaint with Malad Police Station, Mumbai, and on such complaint, First Information Report ("FIR", for short) registered against accused no.1 vide C.R.No.62 of 2017, under Section 354 (a)(d), 506 of IPC. After being released on bail in connection with the said FIR, accused no.1 and his father (applicant) started sending obscene and defamatory messages with a view to see that the marriage of the

complainant would not be solemnized with any other person. The complainant had lodged complaint with Kandivali Police Station, Mumbai, in that regard. The complainant's family then decided to fix the marriage of the complainant with one Aakash Shah on 7th May, 2017. Engagement ceremony was performed on 8th September, 2017. The said fact was learnt by the accused and with a view to break the said marriage, both the accused started sending obscene messages which were defamatory in nature by E-mail and mobile phone to the proposed husband of the complainant and his relatives. The complainant lodged a complaint with Charkop Police Station on 23rd November, 2017, which was registered as N.C. complaint for offences under Section 500 read with 34 of IPC. However, without believing the messages spread by accused no.1 and the applicant, the family of Aakash Shah decided to go ahead with the marriage and the marriage of the complainant with Aakash Shah was solemnized on 11th February, 2018. Even thereafter accused no.1 Rushek and his father (applicant) sent vulgar messages on WhatsApp to complainant. Messages about the character of the complainant which were obscene and vulgar were also forwarded to the husband of the complainant and his relatives. The complainant therefore lodged another complaint with Charkop Police Station

and the FIR was registered vide C.R.No.311 of 2018 on 6th August, 2018.

3 The accused no.1 was arrested on 29th August, 2018. Vide order dated 5th September, 2018, the arrested accused was granted bail by the Court of Chief Metropolitan Magistrate 24th Court, Borivali Mumbai, on certain conditions. The applicant preferred an application for anticipatory bail before the Court of Sessions, which was rejected on 5th September, 2018.

4 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant's son was earlier arrested in a false case lodged by the complainant vide C.R.No.62 of 2017, registered with Malad Police Station, Mumbai. It is submitted that the applicant's son is again arrested in the present case on 29th August, 2018 and he has been granted bail after being in detention vide order dated 5th September, 2018. It is submitted that the minor dispute has been blown out of proportion by the complainant by lodging false case against the applicant and his son. It is submitted that Section 67(A) has been added subsequently. The custodial interrogation of the applicant is not necessary. He is willing to cooperate with the investigation.

It is therefore, prayed that the applicant be granted anticipatory bail.

5 Learned APP submitted that there is strong evidence about involvement of the applicant in the present case. It is submitted that even after the arrest of applicant's son on 29th August, 2018, the applicant had forwarded obscene messages on the mobile WhatsApp of the complainant. It is submitted that Section 67 (A) of IT Act, has been added which is a serious offence. The mobile handset of the applicant is required to be seized. It is submitted that the applicant has sent several vulgar and obscene messages with respect to the character of the complainant to her husband and the relatives of husband. The messages were were defamatory in nature. It is submitted that the applicant has no regard for the law and has no fear of consequences for sending such messages. It is submitted that the complainant had lodged the FIR against the arrested accused in which he was arrested and after his release, the applicant and the said accused had continuously forwarded the obscene messages causing harm to the reputation of the complainant to various persons. The sole intention of the accused was to see that the marriage of the complainant would not be solemnized with any

other person. It is submitted that the complainant has repeatedly forwarded her complaints with regards to the messages forwarded by the accused to the police station. It is submitted that after realizing that the marriage of the complainant was fixed with Aakash Shah, the applicant and his son had forwarded defamatory messages to her proposed husband as well as his relatives. It is submitted that even after the marriage was solemnized the accused kept on sending obscene messages to her husband and others as well as to the complainant. It is submitted that thousands of messages were send by the accused. In the reply filed by the prosecution opposing application for anticipatory bail preferred by the applicant before the Sessions Court, it is stated that during the course of investigation, statements of the witnesses were recorded by the police. Accused no.1 was arrested on 29th August, 2018, and, even thereafter the applicant has forwarded the WhatsApp messages to the complainant, her father in law. He has forwarded the photographs of the complainant with accused no.1, which were clicked in the past and sent obscene messages to the witnesses. On providing said information to the police, supplementary statement of the witnesses was recorded and the provisions of Section 67(A) of IT Act were added. It is further stated that the arrested accused and

the applicant had forwarded obscene pictures and WhatsApp messages amounting to outraging modesty of the complainant to witnesses. It is also stated that even after registration of FIR, the applicant had repeatedly forwarded obscene messages and photographs to complainant and witnesses.

6 The reply filed by the prosecution before the Sessions Court further indicates that attempts were made to find the CDR location and the address of the mobile phone of the accused and it was revealed that the residence of accused as Gokul Nagar Bhivandi. Police tried to find out the whereabouts of the accused. When they approached the wife of the applicant, she had informed him about the visit of the police and when the police informed him to attend the police station, he gave evasive reply. Learned counsel for the intervener representing the first informant also oppose the grant of anticipatory bail. During the course of argument, the learned counsel for the intervener has pointed out the nature of the messages forwarded by the applicant. From the nature of the material collected during the investigation and the factual aspects narrated in the FIR, it is evident that the applicant has allegedly forwarded several messages, which were defamatory in nature, and which are obscene and which are causing harm to the reputation of the

complainant. Even after the registration of the FIR, the applicant has repeatedly forwarded such messages. The applicant had also allegedly forwarded the picture messages. The messages were intending to insult the modesty of woman. The messages were in the nature intending to malign the character of the complainant. The messages were vulgar and obscene. The messages were sent repeatedly. Even after the arrest of the other accused, the applicant has forwarded such messages to the complainant. Even after the complainant's marriage was solemnized on 11th February, 2018, the act of sending obscene message continued. One of the vulgar message is reproduced in the complaint. Taking into consideration the aforesaid circumstances, no case for grant of anticipatory bail is made out and hence, the application is required to be rejected.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.1888 of 2018 is rejected. Criminal Application No.1153 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)