

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2464 OF 2019

Dipesh Dinesh Jain ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2485 OF 2019

Anup Rakesh Shukla ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. S.V. Marwadi a/w N.M. Nadar i/b M.D. Mali and Co., Advocate for the Applicant in ABA No. 2464 of 2019.

Mr. Suparnaraj B. Dhotre a/w N.P. Shukla a/w Dhanashri V. Shinde, Advocate for the Applicant in ABA No. 2485 of 2019.

Mr. Prashant Jadhav, APP for the state-respondent in ABA No. 2464 of 2019.

Mr. H. J. Dedhia, APP for the state-respondent in ABA No. 2485 of 2019

Ms. Sunita Bhor, API, (I.O.) Crime Branch, Navi Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th November, 2019

PC :

1. The applicants are seeking anticipatory Bail in connection with C.R. No. 374 of 2019 registered with Kharghar Police Station, District Navi Mumbai, for offences punishable under Sections 376, 342, 323 of Indian Penal Code.

2. The FIR was lodged on 15th October, 2019. The case of the complainant is that since 26th August 2019 she was employed with the Coaching class at Nerul. She worked there for some time and there after she started working at the same coaching class at Kharghar on 10th September, 2019. On 22nd September, 2019 at about 7.30 pm. she left the office. She went to room No.2 to pick up her umbrella. It is alleged that the applicant in Anticipatory Bail Application No. 2464 of 2019 entered the room. The complainant questioned him for closing door. The said applicant stated that he has closed the door to do what he intends to do. He also stated that he has sent Sampurnanand Tripathi out. He removed his clothes. He caught mouth and neck of complainant. He banged her head on wall. He closed the door. He sexually assaulted the complainant. He forcefully inserted his private part in the mouth of the complainant. She managed to run away from office. She went to Kharghar Railway Station. It is further alleged that the complainant intimated the said fact to the applicant in Anticipatory Bail Application No. 2485 of 2019. However, he did not take any action. The complainant requested for giving her work at Koparkhairane. She started working at Koparkhairne after about 8 days. The complainant informed about the said incident to her brother and other relatives. On 14th October, 2019 complainant called applicant in Anticipatory Bail Application

No. 2485 of 2019, told her to meet at hotel. The FIR was registered on 15th October, 2019. The investigation is in progress.

3. The applicants had preferred an application for Anticipatory Bail before the Sessions Court which has been rejected by order dated 8th November, 2019. During the pendency of the application before the Sessions Court, the applicant in Anticipatory Bail Application No. 2464 of 2019 had approached this Court. Since interim protection was not granted by the Sessions Court. This Court by order dated 22nd October, 2019 granted interim protection to the said applicant pending his Application before the Sessions Court.

4. Learned counsel for the applicant in Anticipatory Bail Application No. 2464 of 2019 submits that false case has been lodged by the complainant against him. The complainant was seeking transfer and being enraged for not transferring her, she has filed complainant. There is delay in lodging the complaint. The FIR was lodged on 15th October, 2019. It is further submitted that the FIR gives an impression that the incident had occurred on 10th September, 2019. In concluding Paragraph of FIR, it is stated that the alleged incident had occurred on 22nd September, 2019. It is submitted that initially the investigation was conducted by Kharghar Police Station. The applicant had cooperated with the investigation.

He has explained to the investigating authority that he has been falsely implicated in the case. The applicant had attended Investigating Officer. However, subsequently the investigation was transferred. Proper investigation has not been conducted by current investigating agency. The explanation would absolve the applicant from charges. There are calls made by the complainant to the applicant even after the alleged incident, which is not possible in the event such incident had occurred. He submitted that the messages and the calls ought to have been investigated by the investigating agency. The fact that the FIR has been lodged belatedly would itself indicate that story was concocted by the complainant. Custodial interrogation is not necessary.

5. Learned counsel appearing for the applicant in Anticipatory Bail Application No. 2485 of 2019 submitted that he has been falsely implicated in this case. He has no role in the alleged incident. The only allegation made against him, is that he did not take any action after the information was provided to him by the complainant about the conduct of the co-accused. He is willing to cooperate with the investigation. He has been falsely implicated by the complainant.

6. Learned APP submitted that the offence is of serious nature. The delay, if any will be explained during trial. On account of the

mental condition of the complainant after the incident she did not lodge the complaint immediately. She informed her brother about incident and thereafter complaint was lodged. The complainant has attributed specific overt act to the applicant in Anticipatory Bail Application No. 2464 of 2019. It is submitted that the statement of other witnesses recorded during the course of investigation corroborates the prosecution case. It is submitted that witness Sampurnand Tripathi has narrated sequence of the events and also stated about the demeanor of the applicant in Anticipatory Bail Application No. 2464 of 2019 immediately after the incident. The other witness who is also working in the said Coaching classes has also narrated the disturbed mental condition of the victim. The presence of the applicants is established as they were present in the office on the date of incident. It is further submitted that the applicant had mislead this Court while preferring the earlier application for interim protection by submitting that the incident had occurred on 10th September, 2019 and on that day he was not present in the office. It is submitted that it was clear from the FIR itself that the incident had occurred on 22nd September, 2019 and not on 10th September, 2019. The complainant has attributed specific act amounting to offence under Section 376 of IPC. The version of the complainant cannot be brushed aside at this stage. The investigation

is in progress. It is also submitted that the applicant in Anticipatory Bail Application No. 2485 of 2019 was working as a supervisor in the said Coaching Class. He was intimated by the complainant about act committed by accused No.1. However, no action was initiated by him. Although he was working as supervisor in the said Coaching class. He submitted that on the contrary the complainant called her at hotel Yoyo.

7. I have perused the documents on record. The FIR dated 15th October, 2019 mentioned that at relevant time the complainant was working in the Coaching class. She was sexually assaulted by the applicant in Anticipatory Bail Application No. 2461 of 2019. The FIR mentioned that the incident had occurred on 22nd September, 2019. The materiel on record indicate that the applicant was present in the office on the date of incident. The statement of the witnesses recorded during the course of investigation corroborates the case of the complainant. The complainant also mentioned that she was in disturbed state of mind. She was informed her brother about the act of accused, subsequently she lodged the complaint. Considering the fact that there is specific allegation against the applicant in Anticipatory Bail Application No. 2464 of 2019 and also in the light of evidence collected during investigation, the contention of the learned counsel for the applicant appearing for the said applicant

that he has been falsely implicated cannot be accepted at this stage. The investigation is in progress. The role attributed to the applicant in Anticipatory Bail Application No. 2485 of 2019 is that although he was informed about the said incident, he did not take any action and that he called complainant at hotel. Considering the role attributed to him, he can be directed to cooperate with the investigation as his custodial interrogation is not necessary. In the light of the nature of the allegations and materiel on record the applicant in Anticipatory Bail Application No. 2464 of 2019 is not entitled for protection under Section 438 of Cr.PC. Hence, order as follows :

ORDER

- i) Anticipatory Bail Application No. 2464 of 2019 is rejected and Anticipatory Bail Application No. 2485 of 2019 is allowed.
- ii) In the event of arrest of applicant Anup Shukla in connection with C.R. No. 374 of 2019 registered with Kharghar Police Station, District Navi Mumbai, he be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- iii) The applicant Anup Shukla shall attend the Investigating Officer on 28th, 29th and 30th November, 2019 between 10.00

am. to 1.00 pm. And thereafter as and when called for till filing of charge sheet.

iv) Applicant Anup Shukla shall not contact the victim or any other witnesses.

(PRAKASH D. NAIK, J.)