

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

ANTICIPATORY BAIL APPLICATION NO.599 OF 2020

Sagar Sachin Udawant

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

...

Mr.S.S. Ladda, Advocate for the applicant.

Mr.N.T. Bhagat, APP for respondent/State

Mr.Hemant Surve, Advocate for informant.

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CORAM : V.L.ACHLIYA,J.

DATE : 09.10.2020

ORAL ORDER :

. On an apprehension of arrest in connection with the offence registered U/s. 307, 406, 498-A, 420, 354-A, 120-B, 506 of the Indian Penal Code (IPC), vide C.R. No.I-63/2020 with Police Station Vaijapur, the applicant has preferred this application seeking anticipatory bail.

2. Heard learned counsel for the applicant, learned APP representing the respondent-State and learned counsel

representing the informant. Perused the first information report and the order passed by the learned Additional Sessions Judge rejecting the application to the extent of applicant. So also perused the papers of investigation.

3. In brief, it is the contention of learned counsel for the applicant that the applicant is innocent and falsely implicated in the case at the behest of the informant, who is wife of younger brother of the applicant on account of matrimonial discord with her husband. It is submitted that the entire family of the applicant has been implicated by making false complaint.

4. By referring the allegations made in the first information report, learned counsel submits that the allegations made are vague and general in nature. In the complaint, the

informant has made allegation that the applicant and his brother-in-law Sandeep had ill eye at her and they used to extend unholy behaviour. The brother-in-law Sandeep has been released on bail. The learned Additional Sessions Judge has rejected the application only for the reason that the allegations made in the complaint make out a case to attract offence to outrage modesty of the informant. In this context learned counsel for the applicant invited attention to the observations made in the order dated 07.07.2020, which reads as under :-

"3. In the entire FIR, there is nothing about the demand of any unlawful amount. It is pertinent to note that the allegations against the applicant/accused No.1 Sagar Udavant are serious in nature in the form that he tried to outrage the modesty of informant. Thus, in my considered opinion the applicant/accused No.01

Sagar Udavant is not entitled for pre-arrest bail. The applicant/accused No.02 Amruta Udavant is the wife of applicant/accused No.01. It is the specific and only allegation against the applicant/accused No.02 that she had locked the door of bath-room from the outside when the informant had gone for taking bath. Thus, I am of the considered opinion that the applicant/accused No.02 is entitled for pre-arrest bail with certain conditions."

5. In the background of overall facts of the case and the reasons recorded by learned Additional Sessions Judge, learned counsel submits that even if the allegations made in the first information report presumed to be correct still it make out no case to invite registration of offence against applicant U/Sec. 307, 420, 498-A, 354-A, 120-B, 506 of IPC as well as section 406 of IPC, which is claimed to be added during the

course of investigation. It is submitted that the allegations made in the complaint at the most attract the registration of offence U/Sec. 354 of IPC against the applicant, which is bailable. It is submitted that no amendment to Section 354-A has been made applicable in the State of Maharashtra. Since the offence U/Sec. 354 of IPC is provided with maximum punishment upto 3 years or fine or both in terms of Schedule-II of Code of Criminal Procedure, the offence U/Sec. 354 of IPC is bailable. The allegations made in the first information report leading to registration of offence U/Sec. 307 of IPC, are made only against the mother-in-law of the informant. It is contended that the informant has alleged that her husband is impotent and fact regarding his impotency was suppressed by the accused, and thereby offence U/Sec. 420 of IPC has been committed. In this context, learned counsel submits that

there is no question of suppression of such fact on the part of the applicant and there is nothing to presume that accused no.1 is impotent and this fact was within knowledge of applicant. The allegations made in the complaint in respect of offences other than section 354 of IPC are vague and general in nature. The allegations of making sexual advances amounting to outraging the modesty of informant are false, concocted, imaginary and made with an intention to any how implicate the applicant. The co-accused against whom the similar allegations have been made granted anticipatory bail by learned Additional Sessions Judge. The applicant has no criminal antecedents. He is a married person. The complaint lodged is outcome of matrimonial discord between informant with her husband. The entire family of the applicant has been roped in by informant to harass and humiliate by filing

false complaint.

6. It is further submitted that prior to filing of the complaint on 12.02.2020, the informant had filed Petition No.A-217/2019 in the Family Court at Aurangabad for divorce. So also, the informant filed proceedings under the Protection of Women from Domestic Violence Act, 2005 against all the family members. In the Petition filed before the Family Court, no allegations as made in the first information report made against the applicant. The allegations made in the complaint are false and concocted. The grant of anticipatory bail to the applicant would not affect the investigation. The custodial interrogation of the applicant is not required. In order to protect the liberty of the applicant on the basis of false and frivolous complaint filed by the informant, the protection U/Sec. 438 of Cr.P.C. deserves

to be extended to the applicant.

7. On the other hand, learned APP opposed the application with contention that the allegations made in the complaint make out prima facie case against the applicant. The applicant has committed serious act amounting to outrage the modesty of informant. During the course of investigation, the offence U/Sec. 406 of IPC has been added. In order to conduct proper investigation and make recovery, the custodial interrogation of the applicant may be required.

8. Learned counsel for the informant strongly opposed the application with contention that there is prima facie case attracting offences U/Sec. 307, 406, 420, 498-A, 354-A, 120-B, 506 of IPC against the applicant. By referring overall facts of the

case and the nature of accusations made against the accused persons including the applicant, learned counsel submits that the applicant do no deserve protection U/Sec. 438 of Cr.P.C. It is submitted that subsequent to filing of the complaint, the additional statements have been recorded, which make out case for commission of offence U/Sec. 406 of IPC. The gold ornaments of about 1.5 Kg given in the marriage of the informant are to be recovered. Grant of anticipatory bail to the applicant would affect the ongoing investigation and recovery and urged to reject the application.

9. On due consideration of submissions advanced in the light of overall facts of the case, nature of accusations made against the applicant, the order passed by learned Additional Sessions Judge, I am of the view, the applicant has made out case for grant of

anticipatory bail to the applicant.

10. Perusal of the order dated 07.07.2020 passed by the learned Additional Sessions Judge spell out that the learned Additional Sessions Judge has rejected the application only for the reason that the first information report spell out that the applicant had tried to outrage the modesty of the informant.

11. Perusal of the first information report dated 12.02.2020 spell out that the informant has implicated the entire family of her husband. It is evident from the record that there is matrimonial discord between the informant and her husband since her marriage. In the complaint filed, the informant has alleged that her marriage with Satyajeeet accused no.1 was solemnized on 06.05.2018. Her husband who is Engineer working with John

Dear Company in U.S.A. Few days after the marriage he left America to resume his job. In the month of July, 2018, the informant along with her mother-in-law and father-in-law i.e. accused nos.2 and 3 went to America to reside with her husband. It is the case of the informant that during their stay, the accused nos.2 and 3 did not allow her to resume cohabitation with her husband. After staying for two months, accused nos.2 and 3 returned to Vaijapur i.e. to their native place. Even after accused nos.2 and 3 left, her husband has not allowed her to establish conjugal rights and there was no physical relationship between them. In the month of November, 2018, her husband came to India along with her on the pretext of extension of Visa. Her husband left for America leaving her at her matrimonial house. He asked her to undergo the course of Shri Shri Ravishankar and thereafter he will sent tickets for

return journey for America. Since thereafter she tried to contact her husband, however, she was not taken back to America by her husband and her husband has put her phone under blacklist.

12. In the complaint, the informant has alleged that during her stay at her matrimonial house, she was ill-treated and harassed by her in-laws and other accused persons. They were not providing food and other necessities. They were not allowing her to wear ornaments even during festivals. It is alleged that she put on fast in front of matrimonial house on 13.01.2020. At that time, her in-laws assured that they will call her husband from America. It is alleged that at the instance of her husband, the accused used to illtreat and harass her. Her mother-in-law tried to press her neck and they tried to driven out her from their house. It is

further alleged that on 10.01.2020, while she was inside the bathroom, the wife of the applicant knocked the door and asked her to use the bathroom either before 8 a.m. or after 10 a.m. otherwise she will confine her in the bathroom. She had latched the door of the bathroom from outside. It is further alleged that the applicant and her brother-in-law Sandeep i.e. accused no.6 were keeping bad eye on her and making sexual advances.

13. In the background of complaint lodged and the allegations made therein, it is apparent that the complaint filed is outcome of matrimonial discord of informant with her husband. By the complaint filed, she has roped in entire family of the applicant. The allegations made are vague and general in nature. Before filing the complaint, the informant had filed the Petition No.A-217/2019 seeking declaration of marriage with

her husband Satyajeeet as nullity. From the copy of the Petition annexed at Exhibit-C spell out that the Petition was filed on 30th April, 2019 i.e. about 6 to 8 months prior to filing of the complaint and registration of offence against the applicant. In the Petition filed, the informant has shown her residential address at Aurangabad. The incident narrated in the complaint alleged to have occurred at Vaijapur, Dist. Aurangabad. Before filing the first information report on 12.02.2020 informant had filed a proceedings U/Sec. 12 of the Protection of Women from Domestic Violence Act, 2005 as against the accused persons in the Court of Judicial Magistrate, First Class, Vaijapur, which has been registered as Case No.58/2020. The complaint appears to be presented on 01.02.2020. It also appears that the Civil Suit i.e. R.C.S. No.17/2020 has been filed against the informant and her family members

in the month of January, 2020 by the accused no.2 – father-in-law of the informant claiming prohibitory orders. In the said suit, the counter claim appears to be made by the informant and other defendants on 10.02.2020. On 26.09.2019, the father of the present applicant had filed complaint vide C.R. no.333/2019 with Police Station, Vaijapur leading to registration of offence against the uncle and other relatives of the informant for committing offences punishable U/Sec. 324, 323, 504, 506, 143, 147 of IPC. On 02.01.2020, the informant has lodged complaint of appointing security guards. On 07.01.2020, the informant has intimated the Officer Incharge of Police Station, Vaijapur that she was proceeding on fast.

14. This in the light of overall facts of the case, possibility of applicant being falsely implicated in the case cannot be

ruled out. The accusations made in the first information report at the most make out case for prosecution of applicant U/Sec. 354 of IPC. The co-accused i.e. accused no.6 has been granted bail by the Sessions Court on same ground. The complaint appears to be filed after due deliberation. On 30.04.2019, the informant has filed proceeding seeking decree of nullity against her husband. The present complaint leading to registration of offence has been filed on 12.02.2020 i.e. after a period of about 8 months after filing the proceeding seeking decree of nullity. Before filing the complaint, number of cases came to be registered against each other. Informant has filed proceeding under the Protection of Women from Domestic Violence Act, 2005 against the applicant and other accused persons before filing the present complaint. At the instance of father of the applicant, the case was registered against

the relatives of the informant. In that view, the present complaint being filed with intention to any how frame the applicant in the case cannot be ruled out. The applicant is married person. He has no criminal antecedents. The grant of anticipatory bail to applicant would not frustrate the ongoing investigation. The offence U/Sec. 406 of IPC has been added on the basis of the alleged supplementary statement. In the complaint filed, there are no allegations of misappropriation of *Stridhan* and gold ornaments weighing 1.5 kg. In the facts and circumstances of the case, custodial interrogation of the applicant is not required. I am therefore inclined to allow the application. Hence the following order:-

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest of the

applicant in connection with the offences registered U/s. 307, 498-A, 420, 354-A, 120-B, 506 of the Indian Penal Code (IPC) as well as Sec. 406 claimed to be added during the course of investigation, vide C.R. No.I-63/2020 with Police Station Vaijapur, the applicant be released on anticipatory bail in the sum of Rs.15,000/- with one surety in the like amount on following conditions :

a) The applicant shall appear before the Investigating Officer on 15th October, 2020 at 11 a.m. and cooperate in investigation.

b) After 15th October, 2020, the applicant shall appear before the Investigating Officer as and when directed by the Investigating Officer.

(c) Pending hearing and final disposal of the case against the applicant, the applicant shall not commit any act amounting to pressurizing the prosecution witnesses.

(d) In the event of breach of any of the conditions, the anticipatory bail granted to the applicant is liable to be cancelled.

(f) The application is disposed of in above terms.

(g) It is clarified that the observation made hereinabove are made for the limited purpose of deciding the present application. None of the observation made shall be treated as observation made as to merit of the case of the prosecution against the applicant.

[V.L.ACHLIYA]
JUDGE

SGA