

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1059 OF 2020

1. Keshav s/o Manohar Sudrik
 2. Sanket @ Bobby s/o Sanjay @ Sanjeev Thorat ... Applicants
- Versus
- The State of Maharashtra ... Respondent

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Mr. D. A. Mane, Advocate for applicants.
Mr. V. S. Badakh, APP for respondent – State.

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WITH
CRIMINAL APPLICATION NO.2309 OF 2020
IN ABA/1059/2020

Mrs. X ... Applicant

Versus

1. The State of Maharashtra
2. Keshav Manohar Sudrik
3. Sanket @ Bobby s/o Sanjay @ Sanjiv Thorat ... Respondents

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Mr. Shaikh Mahar A. Jahagirdar, Advocate for applicant – original informant.
Mr. V. S. Badakh, APP for respondent No.1 – State.
Mr. D. A. Mane, Advocate for respondent Nos.2 and 3.

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WITH
ANTICIPATORY BAIL APPLICATION NO.1138 OF 2020

Rushikesh s/o Vijay Khandagale ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. D. A. Mane, Advocate for applicant.
Mr. V. S. Badakh, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14-12-2020

ORDER :

. Criminal Application No.2309 of 2020 filed by the original informant seeking permission to assist learned Additional Public Prosecutor is hereby allowed and disposed of.

2. Anticipatory Bail Application Nos.1059 of 2020 and 1138 of 2020 have been filed by accused Nos.2, 3 and 1 respectively for getting pre-arrest bail, as they are apprehending their arrest in connection with Crime No.410 of 2020 dated 05-09-2020 registered with Sonai Police Station, District Ahmednagar for the offences punishable under Sections 376(2)(I), 376(2)(J), 354-A, 363, 366-A, and 506 of Indian Penal Code, Sections 4, 6, 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act'), Section 66(e) of the Information Technology Act, 2000 and Section 3/25 of the Arms Act, 1956. In order to avoid confusion hereinafter the applicants are referred by their names.

3. Heard learned Advocate Mr. D. A. Mane for applicants in respective anticipatory bail applications, learned APP Mr. V. S. Badakh for respondent – State assisted by learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for original informant.

4. It has been vehemently submitted on behalf of the learned Advocate for the applicants that applicant - Rushikesh was having love affair with the informant and, in fact, they have performed marriage as per vedic rites at Shree Ram Vaidik Vivah Sanstha, Nashik on 19-08-2020. The applicants – Keshav and Sanket had only helped both of them to perform marriage, as there was resistance from the family members of the informant – prosecutrix. The allegations in respect of offences under Sections 376(2)(I), 376(2)(J) of Indian Penal Code and POCSO Act are against applicant – Rushikesh and as regards the other applicants are concerned, it is alleged that their act is covered under Section 366-A of Indian Penal Code. Their physical custody is absolutely not required. When the couple got knowledge about lodging up of the missing report in respect of the informant – prosecutrix, they went *suo moto* to the police station on 20-08-2020 and showed the documents in respect of marriage. At that time, the statement of Rushikesh as well as the informant – prosecutrix was taken down by the police and they were allowed to go home. After they came out of the police station, informant – paternal uncle, her mother and relatives impressed on Rushikesh that since the father of the informant is ill, they would take her to meet him and thereafter, would leave her at his place. Thereafter, till 29-08-2020, informant was not allowed to meet Rushikesh and, therefore, he lodged a written complaint with District Superintendent of Police. It appears that due to the pressure from the parents, she has lodged the report and now she

is contending that her marriage has been performed forcibly against her wish. The marriage, in fact, is inter-caste marriage and, therefore, there is resistance. The photographs of the marriage ceremony have been produced which would show that the informant was, in fact, happy and there was absolutely no fear on her face giving indication that she has been forced in any manner. She had even made an affidavit on 19-08-2020 before competent authority, so also marriage certificate has been issued by Panchavati Nashik Temple. There was every room for the informant to disclose it to the priest, who was asking Rushikesh and informant to undergo the rites. However, such complaint was not made by her and when the marriage has been performed, now due to the pressure from the parents, there is false implication of the applicants. Physical custody of the applicants is absolutely not required for the purpose of investigation. The applicants are ready to abide by any terms that would be imposed.

5. Per contra, learned APP well assisted by learned Advocate representing the informant vehemently submitted that in her FIR, the informant has given all those details of events as to how she came in contact with Rushikesh. Since beginning Rushikesh used to give threats to her, used to pressurize her for accepting his love for her. In August, 2017, at the gunpoint, he had taken her to Devgad, Tq. Newasa. He had taken her photographs and by giving threat to make them viral and defame her, he used to solicit her company. In the year 2018, she was forcibly taken by him to one Radha Krushna Hotel at

Bramhani Tq. Newasa and had forcible intercourse after intoxicating her. He had taken her new photographs and after giving threat to make them viral, she was blackmailed. She was kidnapped on 16-08-2019 by Rushikesh, Keshav and Sanket and, thereafter, even Rushikesh's father had also given her threat. She was left to go home, however, under fear and was asked to come out of the house at about 01.00 a.m. on 18-08-2020. Accordingly, she went and by showing her, her new photographs, Rushikesh asked her to do all those acts which he would tell her. She was then taken to Panchavati, Nashik and forcible marriage was performed. By calling one boy after the marriage, she was taken to the house of that boy and at that time, Rushikesh had performed sexual intercourse with her against her wish. She was then taken forcibly to Sonai Police Station and was forced to say to the Police Station that she has performed marriage with her own consent and then accordingly, she has given that statement. Her maternal uncle had then brought her back to her house. On that day, she did not disclose anything, however, when confidence was given to her by her mother and paternal uncle, she disclosed the entire story. Thereafter, she gave report. Thus, whatever has been extracted and the material on which the applicants intend to rely is, in fact, extracted by force, therefore, that cannot be relied. The physical custody of the applicants is definitely required taking into consideration the fact that they have committed heinous crime.

6. Since the contents of the FIR are already narrated, they need not be repeated. However, the fact remains is that informant intends to say that Rushikesh was harassing her since 2017. She had even gone with him at different places and he was having her photographs. The question is as to whether only on the ground that he had given her threat to make her photographs viral, whether she should have kept mum and would not have disclosed any fact to her parents, especially the mother. Whether the family ties in the house of the informant was so weak that the informant could not get confidence to share everything happening in her life with her mother also is a question. It would be then easy after such a long period to build up a story. The FIR definitely discloses that whatever disclosure has been made by the informant to her mother and relatives is after the alleged marriage and after she was taken to her house from Sonai Police Station on 20-08-2020. As regards the role attributed to Keshav and Sanket is concerned, it is stated that at about 01.00 a.m. on 18-08-2020, they had come along with Rushikesh and after gagging the mouth of the informant - prosecutrix, they had lifted her and put her in a vehicle. It is to be noted that at one place, she says that as the threat was given, she came out of the house at 1.00 a.m., then where was the question for Keshav and Sanket to use force against her. This appears to be the statement that has been made just to counter the presence of these two persons at the time of alleged marriage ceremony. The photographs have been produced on record and

taking into consideration the entire scenario, it will not be proper for this Court to make any kind of comment in respect of the feelings of the girl at that moment, but the fact is certain that when photographs have been taken, there was an intention to use them as proof. The marriage certificate has also been issued. Therefore, the situation of the girl at the time of marriage ceremony could only be expressed by the priest and the other persons, who were present there. The informant is not denying undergoing those ceremonies, but then she says that it was due to pressure or fear. If there would have been any intention to perform the marriage by force, then one of the possibility is that such criminal may not like to have prepared photographs or other documentary evidence. Therefore, definitely, Keshav and Sanket deserves to be released on anticipatory bail.

7. As regards the role of Rushikesh is concerned, as per the FIR it is since 2017 and especially in respect of the sexual intercourse. Though as regards the incident in the year 2018 is concerned, the FIR can be said to be belated. But, as regards the event that had taken place after the alleged marriage, then investigation is necessary since the girl says that it was against her wish. Another fact that is required to be noted from his application is that though he is major, yet, he says that his occupation is student. Instead of pursuing his studies, it appears that he was indulged in such activities. When and with whom he should fell in love would be definitely his own wish, but when it comes to

performance of marriage, then he could have waited. He could have taken all the concerned persons, especially the relatives in confidence before taking such extreme step. The photographs do not show or it has not been pointed out that the parents of Rushikesh were also present at the time of marriage. In his application, he has not explained as to why they were not present. Whether he mean to say that the said marriage was against the wish of his parents is also not clear. Therefore, when he wants to rely upon a fact about the performance of marriage, then he ought to have opened all the cards. The role and conduct of Rushikesh is doubtful, it requires investigation and, therefore, this is not a fit case where the extraordinary powers of this Court should be exercised to protect Rushikesh only on the point that there is marriage certificate in his favour so also the photographs. The ad-interim protection granted earlier by this Court to applicants – Keshav and Sanket vide order dated 10-11-2020 is required to be confirmed and made absolute.

8. With these observations, following order is passed :-

ORDER

- I) Anticipatory Bail Application No.1059 of 2020 and Criminal Application No.2309 of 2020 stand allowed.
- II) Anticipatory Bail Application No.1138 of 2020 filed by Rushikesh Vijay Khandagale stands rejected.

III) The order passed by the learned Additional Sessions Judge, Newasa, Ahmednagar dated 15-10-2020 is hereby set aside. The said application stands allowed.

IV) The ad-interim protection granted earlier by this Court to applicants – (i) Keshav Manohar Sudrik and (ii) Sanket @ Bobby s/o Sanjay @ Sanjeev Thorat vide order dated 10-11-2020 is hereby confirmed and made absolute. In other words, in the event of arrest of applicants viz. (i) Keshav Manohar Sudrik and (ii) Sanket @ Bobby s/o Sanjay @ Sanjeev Thorat in connection with Crime No.410 of 2020 registered with Sonai Police Station, Tq. Newasa, Dist. Ahmednagar, for the offences punishable under Sections 376(2)(I), 376(2)(J), 354-A, 363, 366-A, and 506 of Indian Penal Code, Sections 4, 6, 8, 12, 17 of the POCSO Act, Section 66(e) of the Information Technology Act, 2000 and Section 3/25 of the Arms Act, 1956, they be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- for each of them.

V) They shall not indulge in any criminal activity.

VI) They shall not tamper with the evidence of the prosecution in any manner. They should cooperate with the investigation.

VII) They should remain present before the Investigating Officer on every Wednesday and Saturday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

[SMT. VIBHA KANKANWADI, J.]