

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.189 OF 2021
with
CRIMINAL APPLICATION NO.707 OF 2021

Dr.Devidas Mukundrao Chavan = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.SJ Salunke, Advocate for Applicant;
Mr.AM Phule, APP for Respondent-State;
Mr.GD Kale, Advocate to assist APP.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 23rd March, 2021.

PER COURT :-

1. Criminal Application No.707 of 2021 moved to assist APP is allowed and disposed of.
2. The applicant is apprehending his arrest in connection with CR No.53/2021, dated 7.2.2021 registered at Gangakhed police station, District Parbhani, for the offences punishable under Sections 354 and 354(B) of IPC and, therefore, the present application has been filed under Section 438 of Cr.P.C.
3. Heard learned Advocate for applicant and learned APP well assisted by learned Advocate for

the informant.

4. It has been vehemently submitted on behalf of the applicant that the FIR is nothing but an outcome of political vengeance. The informant appears to be instigated by the political rival of the applicant. Though, the learned Advocate for the applicant has taken this Court through the annexures attached by him with the application, it is not necessary to mention all those annexures here. Suffice it to say that, it appears that one Shri Ratnakar Gutte, who is a Member of Legislative Assembly, has some political rivalry against the applicant. As per his say, there are certain litigation between them. As regards the present FIR is concerned, it is submitted by the learned Advocate that the applicant is a Medical Practitioner by profession and he will not indulge in such activity taking into consideration the body of a lady. He is serving with the Government. Further, the informant herself states that she was examined by the doctor clinically. Definitely, clinical examination relates to touching of body of a patient and, therefore, it could not have been stated by the informant that such touching of the body of the informant by the present applicant was with an intention to outrage her modesty. The FIR appears to be unrealistic and exaggeration. Nothing is required to be recovered at the instant of the applicant and, therefore, he needs to be protected.

5. Per contra, learned APP, well assisted by

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Advocate GD Kale, for the original informant, submitted that though the applicant is the Medical Practitioner, but the way in which it is stated that the offence has been committed, is definitely heinous. The acts that have been allegedly done by the applicant and which are stated in the FIR do not said to be part of the clinical test of the informant. Further, when the matter was before the Additional Sessions Judge, at that time also, the informant had filed an affidavit, stating that she has been politically pressurized by the present applicant to take back her FIR. Therefore, custodial interrogation of the applicant is necessary.

6. At the outset, it is to be noted that the informant in her FIR has stated that she is a sugar-cane cutting labour. When she could engage an Advocate to resist the bail petition before the Additional Sessions Judge as well as this Court, this fact speaks for itself. Further, in this case the applicant is admittedly the medical practitioner and his appointment letter dated 2.9.2008, has been produced, which shows that at that time he was appointed on contract basis for 11 months as Medical Officer (Homeopathy) with Sub-District Hospital, Gangakhed. Further, there is one another certificate issued by the Medical Superintendent of Sub-District Hospital, Gangakhed, stating that he is still in the employment of the Government. The informant, who is 23 years married lady, states that she was suffering from fever and

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stomach-ache and, therefore, she went to the private hospital of the applicant with her brother-in-law. Her brother-in-law was waiting outside and she alone went inside the hospital. She was made to lie on the table and then certain questions were asked to her. She also states that her BP was checked. It was then advised by the present applicant that her health has got down and, therefore, she should get herself admitted. But then she told that since she is a sugar-cane cutting worker, she does not have time. Then the applicant asked her as to what her husband does and then according to her, the applicant has done the alleged acts, which amounted to outraging her modesty. She had kicked him and came outside the room of the hospital. She asked the compounder to give his mobile to her so as to contact with her relatives. But, then she says that till then the present applicant fled away.

7. Now, taking the allegations as they are, nothing is required to be seized at the instance of the present applicant. Physical custody of the applicant is definitely not required. When the informant has no political connection, then there is no point in considering that she has been pressurized politically. She has not given anybody's name, who come to her to give threat to her. So also, she could have lodged a report about the same with the police regarding the incident. Merely by filing an affidavit, it cannot be said that custody of the present applicant would be

required.

8. Definitely, a Medical Practitioner has to touch the body of a patient in order to have clinical examination. Under that circumstance, to stretch the touch of a medical practitioner, amounting to outraging of modesty would be except too much. No doubt, we also cannot undermine the agony of the informant if the incident is true. But, balance will have to be struck taking into consideration the allegations set out in the FIR and, therefore, the application deserves to be allowed. Hence, following order, -

ORDER

i. In the event of arrest of the applicant in connection with CR No.53/2021, dated 7.2.2021 registered at Gangakhed police station, District Parbhani, for the offences punishable under Sections 354 and 354(B) of IPC he be released on PR of Rs.15,000/- with solvent surety in the like amount.

ii. The applicant shall attend the concerned Police Station on every Sunday between 10.00 AM to 2.00 pm.

iii. The applicant shall not indulge in any criminal activity nor shall tamper

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with the prosecution evidence in any manner and shall cooperate with the police during investigation.

iv. The Anticipatory Bail Application stands allowed.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV