

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.323 OF 2020

SANDEEP AMBADAS MORE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.S. Sawant, Advocate for applicant

Mrs. V.N. Patil-Jadhav, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th JANUARY, 2021.

ORDER :

1 Present applicant is apprehending his arrest, in connection with Crime No.392/2019 dated 02.12.2019 registered with Kranti Chowk Police Station, Aurangabad, for the offence punishable under Section 498-A, 313, 504, 506, 120-B of the Indian Penal Code, and therefore, he has approached this Court under Section 438 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. A.S. Sawant for the applicant and learned APP Mrs. V.N. Patil-Jadhav for respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant is not family member or anyway related to the husband of the

informant. The role, that is, tried to be attributed to the present applicant is that he had given some medicine when the informant was pregnant and with the common intention with accused Nos.1 to 3 he has caused abortion/miscarriage of the informant. In fact, the present applicant is not a medical practitioner nor he holds any kind of degree. He is also not practicing any pathy. It appears that after undergoing the sonography of the informant it was transpired that there was no any fluid in pod. As per the medical papers, there is no abortion/miscarriage, but a curating was done by Dr. Rathid and not by the applicant. Informant was under the treatment of Dr. Rathi and Dr. Chavan. The present applicant has not administered any kind of medicine. All the documents from the concerned hospitals have been seized by the police. Further, the statement of the landlady of the applicant has been recorded, who has stated that the present applicant is an Agent/Salesman of a company, who sales Tooth Paste, Soap, Shampoo etc. He is not involved in any aghori practices. Under such circumstance, the physical custody of the present applicant is absolutely not required. Learned Advocate for the applicant canvassed for pre-arrest bail for applicant.

4 Per contra, the learned APP submitted that though part of the investigation is over, yet, it is not completed. It is required to be seen, whether the present applicant, against whom the informant has made

allegation that he was doing some black magic and used to give her some medicine and after consumption of the same she used to get severe pains in her stomach, that is required to be recovered. The informant was four month's pregnant and with the help of the husband and in-laws, because of the present applicant's medicine there is miscarriage without the consent of the informant, and therefore, the physical custody is required.

5 At the outset, it appears to be an admitted fact that the present applicant is not any way related to accused Nos.1 to 3 i.e. husband and in-laws of the informant, and therefore, the provisions of Section 498-A of the Indian Penal Code are not attracted against him. Perusal of the FIR would also show that he had never given any kind of threat or insulted her, and therefore, whatever stated in the FIR attributing offence under Section 504 or 506 of the Indian Penal Code is concerned, it is against accused Nos.1 to 3. Accused No.5 is Dr. Rathi, who is running Saroj Hospital, whereas certain part of treatment was given to the informant. He has been granted anticipatory bail by learned Additional Sessions Judge, Aurangabad on 11.12.2019 vide Bail Application No.2298/2019. Important point to be noted is that if the medicine allegedly given by this applicant would have caused miscarriage or abortion of the informant, then there was no question of admitting her to hospital of Dr. Rathi. The investigation, that has been,

carried out shows statement of Dr. Chandrashekhar Chavan and he submits that he had given treatment to the informant on 31.03.2019. He runs hospital by name "Waluj Hospital". After perusal of the papers of the informant, especially the sonography, that was got done from Inde Imaging Centre of Dr. Rahul Inde, it was found that the fetus was of six months, but there was no cardiac activity, and therefore, he had advised informant to wait for two weeks. He had discharged her with advise to come back after two weeks, however, the informant did not return. That means, though in the FIR she has stated that the fetus was of four months; yet, in fact, it was of six months, in view of the statement by Dr. Chavan. Documents have been collected by the Investigating Officer from various hospitals i.e. Waluj Hospital, Manik Hospital and Research Centre and Kodlikeri Memorial Hospital etc. The sonography report given by Dr. Rahul Inde on 01.04.2019 states that the Gestational Age is six weeks and the opinion given is – "Single, intra-uterine irregular gestational sac is seen of maturity 6 weeks 00 days. Yolk sac not seen. No fetal pole or cardiac activity at present scan. Suggest follow up scan after 2 weeks to look for fetal pole/cardiac activity or to rule out early pregnancy failure". It is to be noted further that the statements of the relatives of the informant i.e. her parents do not disclose that they had ever accompanied the informant to present applicant. Statement of witness Sumitra Trimbak Puri would show that she has rented one room to present

applicant since last about four years. Applicant is a Salesman selling Shampoo, Soaps, Tooth Pastes etc. Nobody has seen him practicing black magic. Similar statement has been given by one Kusumbai Walmik Suryawanshi residing in front of the said rented room of the applicant. Statements of other medical practitioners and the hospital staff would show that the informant was suffering from bleeding and it was advised that she should get curating done. Thus, taking into consideration the evidence, that is collected uptill now, the physical custody of the present applicant is not required for the purpose of investigation in respect of offence under Section 313 of the Indian Penal Code. Hence, the application deserves to be allowed, as follows.

ORDER

1 Application stands allowed.

2 In the event of the arrest of the applicant viz. Sandeep Ambadas More, in connection with Crime No.392/2019 dated 02.12.2019 registered with Kranti Chowk Police Station, Aurangabad, for the offence punishable under Section 498-A, 313, 504, 506, 120-B of the Indian Penal Code, he be released on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only).

3 The applicant shall remain present before the Investigating Officer on every Saturday between 10.00 a.m. to 02.00 p.m. till 31.03.2021

or filing of charge sheet, whichever is earlier.

4 He shall not indulge in any criminal activity nor he shall try to tamper with the evidence of prosecution, in any manner.

(Smt. Vibha Kankanwadi, J.)

agd