

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

ANTICIPATORY BAIL APPLICATION NO. 491 OF 2021

Tathagat s/o Bhagwan Harne	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. S. A. Nagarsoge, Advocate for the applicant
Mr. A. R. Kale, APP for the respondent - State

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 28th MAY, 2021
PRONOUNCED ON : 03rd JUNE, 2021**

ORDER :-

. This is an application for bail under Section 438 of the Code of Criminal Procedure. The applicant claims to have an apprehension of being arrested in connection with Crime No.166/2021, registered at Mahur Police Station, taluka Mahur, District Nanded, for the offences punishable under Sections 376(1), 354, 354-A(2), 506 of the Indian Penal Code.

2. Heard. Perused the First Informant Report (FIR) and the related papers.

The FIR has been lodged by the victim herself. The applicant accused is the informant's cousin brother-in-law (husband's cousin). It is alleged in the FIR that the applicant is the neighbour of the informant. From four months before the FIR dated 30.10.2020, the applicant started to have an evil eye towards the informant. She reasoned with the informant not to behave such a way. The applicant expressed his love for her and asked for sexual favour. When the informant was alone at home, the applicant caught hold of her hand and tried to outrage her modesty. He gave her threats of informing her husband about her character.

It is further alleged that on 16.10.2020, it was the day next before commencement of Navratri festival. The informant had been to the house of her cousin mother-in-law for watching serial on television. Little past 12.00 midnight, she returned from the house of her cousin mother-in-law. While she was in the front yard of her house, the applicant suddenly appeared from adjacent bylane. He caught hold of her hand, dragged and took her behind her residence. The applicant there committed sexual intercourse with the informant without her consent and against her wish. The informant told her

husband on the next day evening. Her husband asked his father-in-law to get the informant back to their house. The informant's brother came and took her away. Thereafter, the informant lodged the FIR.

3. Shri S. A. Nagarsoge, learned Advocate for the applicant would submit that a false and concocted FIR has been lodged. The relationship between the husband of the informant and the applicant, are not good. There is considerable delay in lodging the FIR. The informant is a married woman. No custodial interrogation of the applicant is required. He, therefore, urged for grant of the application.

4. The learned APP would, on the other hand, urged for rejection of the application on the ground of seriousness of the offence.

5. The applicant is the cousin of the informant's husband. The informant and the applicant are the neighbours of each other. It appears that the relationship between the applicant and the informant's husband have not been good. There are papers on record to indicate the applicant had applied to the village panchayat for the post of Peon. A son of one of the members of the village panchayat

was appointed to the said post, even though he secured less marks than others. He was even not interviewed. On the day of the interview, he was away from the village. Still the Grampanchayat officials gave him the appointment. The applicant, therefore, preferred a complaint to the Block Development Officer (B.D.O.). On the B.D.O's direction, the Extension Officer made inquiry into the matter and gave his report holding the appointment of the son of a Grampanchayat member, to be invalid. It was also observed that the persons in authority in the Grampanchayat, misused their official position.

It appears that the said report was submitted 3 – 4 months before the FIR was lodged. Although the applicant had not specifically named the husband of the informant to have misused his position in the recruitment process, the allegations were specific about the involvement of the Grampanchayat members in authority. Admittedly, the informant's husband has been the Deputy Sarpanch. The blame also goes to him.

6. From the allegations in the FIR, it is evident that the applicant allegedly misbehaved with the informant many a times during four months next before lodging of the FIR. The informant

did not inform the said fact to her family members. The applicant allegedly ravished the informant on 16.10.2020. It has been specifically alleged that it was the day next before commencement of Navratri festival. The informant in her statement under Section 164 of the Code of Criminal Procedure, changed her version to state that it was not 16.10.2020, but it was on the intervening night of 11.10.2020 and 12.10.2020. As such, there is 18 days delay in lodging the FIR. The informant allegedly shared her ordeal with her husband on the next day of the alleged incident. The relationship between the applicant and the informant's husband has not been good. There is inconsistency between the FIR and the informant's statement under Section 164 of the Code of Criminal Procedure in relation to the date of the alleged incident. There is 18 days delay in lodging of the FIR. In the fitness of things, it is desirable to grant the application. Hence, following order:-

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.166/2021, registered at Mahur Police Station, taluka Mahur, District Nanded, for the offences punishable under Sections 376(1), 354, 354-A(2),

506 of the Indian Penal Code, the applicant be released on bail on executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with surety bond in the like amount.

- (iii) The applicant shall present himself for the Medical examination, as and when asked by the Investigation Officer.
- (iv) The applicant shall appear before the concerned Investigating Officer as and when required. He shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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