

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

923 ANTICIPATORY BAIL APPLICATION NO.740 OF 2020

GAJANAN VAIJNATHAPPA WASMATKAR

VERSUS

USHA MUNJAPPA POTPHALE AND ANOTHER

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Mr. S.N. Pagare, Advocate for applicant

Mr. K.M. Gadve Patil, Advocate for respondent No.1

Mr. S.Y. Mahajan, APP for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th JANUARY, 2021.

ORDER :

1 Present application has been filed for pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 as the applicant is apprehending his arrest, in connection with Crime No.176/2020 dated 21.06.2020 registered with Cantonment Police Station, Aurangabad, for the offence punishable under Section 354, 354-C, 385 of the Indian Penal Code.

2 Heard learned Advocate Mr. S.N. Pagare for the applicant, learned Advocate Mr. K.M. Gadve Patil for the respondent No.1 and learned APP S.Y. Mahajan for the respondent No.2/State.

3 It has been vehemently submitted on behalf of the applicant that the applicant is serving in Police Department w.e.f. 16.03.1993 and is presently posted at Itwara Police Station, Nanded as Police Naik. He has been falsely involved in the said offence. The informant appears to have used her maiden name for lodging the First Information Report, when after her marriage she was using her different name. She has performed two marriages uptill now. From her second husband she has two children. Her son got married to the relative of the present applicant. That was an arranged marriage. The marriage was settled with the help of one Balasaheb Karbhari Mogal, who is serving as Police Head Constable in Aurangabad Police. The distantly related niece of the present applicant was harassed for dowry and was ill-treated by her husband and the present informant. The present informant and her son used to demand amount of Rs.1,50,000/- for purchasing bullet motorcycle and then started demanding that the agricultural land admeasuring 3.20 acres standing in the name of mother of the niece of the applicant to be transferred in the name of informant's son. Accordingly, a sale deed was executed on 20.10.2015 without payment of any consideration; yet, the demands of the informant and her son never stopped. The niece of the present applicant lodged FIR against the informant and her son on 21.06.2020 at 18.57 hours with Vaijapur Police Station for the offence punishable under Section 498-A, 420, 354, 323, 504, 506 read with Section

34 of the Indian Penal Code. Now, in order to pressurize the niece of the applicant the present FIR has been lodged. There was a proposal for compromise and settlement, and therefore, the applicant had taken leave from his Police Station for 15 days and came down to Aurangabad on 18.06.2020 along with his nephew. However, none could arrive at. No such incident, as narrated in the FIR, has taken place. The nature of allegations made do not require the physical custody for the purpose of investigation, and therefore, the learned Advocate for the applicant prayed for releasing the applicant on anticipatory bail.

4 Per contra, the learned APP strongly opposed the application on the ground that the offence, that has been lodged against the applicant, is serious. In fact, he had taken out, as per the allegations in the FIR, half nude photos of the informant. The mobile phone and the recording is yet to be recovered from him. Further, the present applicant had demanded amount of Rs.5,00,000/- for the settlement of the dispute. The mobile tower location of the informant, applicant and witness has been taken and it reveals that they were at one place. Therefore, the physical custody of the present applicant is definitely required.

5 At the outset, it can be said that merely because the sections, those have been involved *per se* may not require physical custody will not be

the sole criteria, but the circumstances, under which the offence has been committed, the allegations made, role attributed, seriousness of the offence are certain factors, those are also required to be considered. In addition to that the status of the accused is also required to be considered. Here, the applicant himself is a Police Officer, who is supposed to protect the property and person of the citizens. He cannot be allowed to indulge himself in a criminal activity.

6 Both the FIRs have been produced on record i.e. one, in which the applicant is apprehending his arrest and another, which is filed by the niece of the applicant. It is to be noted that the niece of the applicant had lodged report with Vaijapur Police Station on the same day i.e. on 21.06.2020 at 18.57 hours. However, the present FIR has been lodged at about 18.40 hours on 21.06.2020 at Cantonment Police Station, Aurangabad. Thus, the offence which is registered against the applicant is prior in time, and therefore, we cannot say that the present FIR is in retaliation. It is specifically in respect of alleged incident dated 20.06.2020. Even as per the statement of the applicant he was on leave during that period and it appears that he is not denying his presence in Aurangabad during that period. The document in respect of tower location of the informant has been revealed. Tower location of the accused at 15:33:48 hours on 20.06.2020 is near Nehru

Chowk, Cantonment, Aurangabad. Further, it appears that further details in respect of some other mobile phones are yet awaited. It will not be out of place to mention here that by way of ad interim relief this Court had granted the protection and then directed the present applicant to surrender his mobile before the Investigating Officer, and accordingly, it appears that he had surrendered it. Apparent inspection of his mobile showed that there was no memory card or sim card in the said mobile phone. So also it was not found that there were any photographs or videos of the informant. The Investigating Officer has stated that if the applicant would have deleted those photographs then the said hand set is required to be sent to the Forensic Laboratory for recovery of the same. Further, the conduct of the applicant is also mentioned by the Investigating Officer that when he was interrogated about purchase of the handset, he told that he does not possess the bill. However, he sent the bill on the next day on WhatsApp of the Investigating Officer, which showed that he had purchased the mobile phone on 18.04.2019. Under these circumstances, it is now required to be seen as to what is the story that was stated in the FIR. The informant says that her daughter-in-law has filed the civil proceedings in Gangapur Court and it appears to be in respect of either Domestic Violence Act or for maintenance. The informant says that in order to have settlement in that respect the present applicant had come to her house, at that time, she was alone. After

discussing the matter, since she was supposed to go for her duty, by asking the applicant to sit in the hall she went to her bed-room for changing clothes. Applicant thereafter suddenly went in her bed-room and by embracing her when she was changing her clothes, she was dragged towards bed and at that time, he had kept On the camera from his mobile. The applicant thereafter threatened her that he has taken her nude photographs and he would show it to people and defame her, she should give the land to her daughter-in-law and amount of Rs.5,00,000/- to him. He also threatened that he would make it viral to people that she has illicit relations. The informant says that due to the fear she did not lodge any report, however, she was again called at 3.30 p.m. on 20.06.2020 for compromise near Sancheti Hospital near Cantonment in Aurangabad, at that time, one Mangala Sangekar, Gaikwad Police, Mogal Police were present. They discussed the matter for about two minutes and thereafter the applicant took her aside and after showing her the video touched her breasts and told that she should give amount to him as well as the land to her daughter-in-law otherwise he would make that video viral. She told him that he should do whatever he wants and went to home, informed the said fact to relatives and then lodged the report on the next day i.e. on 21.06.2020. Statements of the witnesses have also been recorded, who were allegedly present on 20.06.2020.

7 At this stage, we are required to consider the allegations in the FIR and if we considered the allegations in the FIR, definitely those acts mentioned in the say cannot be accepted for the behaviour of a Police Officer. Further, as aforesaid, though he has handed over the mobile phone; yet, the fact is required to be considered as to whether he has deleted it, and therefore, on that ground also the extraordinary power of this Court under Section 438 of Cr.P.C. cannot be extended. Case is not made out to release him on pre-arrest bail. Hence, application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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