

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

1 ANTICIPATORY BAIL APPLICATION NO.882 OF 2021

SANTOSH KONDIBA SAWANT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Satyajeet J Rahate

APP for Respondents: Mr. A.V. Deshmukh

Adv. For respondent No.2 : Mr. S.B. Ghatol Patil

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CORAM : PRAKASH D. NAIK J.

DATE : 20TH OCTOBER, 2021.

PER COURT:

1] This is an application for anticipatory bail in Crime No. 126 of 2021, registered with Pundlik Nagar police station, Dist. Aurangabad for the offence punishable under Sections 498A, 354A, 323 r/w. 34 of IPC and Sections 8 and 12 of the POCSO Act. The FIR was registered on 26th March, 2021. Subsequently, sections 376, 354B, were added. Similarly, Sections 3,4,7,8,9(M)(L), 10, 12, 16 and 17 of the POCSO Act were also added.

2] The complainant is the wife of the applicant. It is alleged that marriage of the complainant was performed with the applicant on 16th May, 2007. Daughter was born out of the wedlock in 2008 and presently she is aged about 12 years. The applicant had illicit relations

with the co-accused Meena. complainant's husband (applicant), Meena and her friend Anna Pan-tapriwala used to visit house of the complainant. She was made to drink liquid and while she was unconscious her husband and Meena used to disrobe her. They used to pour drops of was of burning candle on her private part. On demand of water, accused applicant used to pass urine in her mouth. She was subjected to harassment. The husband used to put lizard on her person to scare her. The co-accused Anna Pan tapriwala and Meena used to disrobe daughter of the complainant and outrage her modesty by touching her private part. The applicant husband used to have physical relations with Meena in presence of complainant and daughter. Father-in-law and mother-in-law harassed her. Applicant was suspecting her character and threatening that videos would be made viral.

3] During the course of investigation, supplementary statement of the complainant was recorded. The statements of the minor daughter were recorded under Sections 161 and 164 of the Cr.PC. Statement of the complainant was also recorded under Section 164 of Cr.PC.

4] The applicant had preferred an application for anticipatory bail before the court of sessions which has been rejected by order dated 13th July, 2021.

5] The learned counsel for the applicant submitted that contents of the FIR are false. The allegations therein are improbable and

imaginary. The marriage was performed in 2007 and the daughter of the complainant and applicant is now aged about 12 years. The allegation that co-accused used to visit their house are concocted. Statements of the neighbours were recorded. They do not refer to entry of the co-accused in the premises of applicant. The marriage was in force since last 14 years. The daughter has been tutored by the complainant. There is variation in their statement recorded under Section 161 and 164 of Cr.P.C. Medical evidence does not support the prosecution case. The applicant has not been attributed any role of causing sexual harassment to the daughter. At the most, applicant is attributed allegation which pertains to the offence under Section 498A of IPC. The mother of complainant was in Police Department and FIR is registered under her influence. Custodial interrogation of the applicant is not necessary.

6] Learned APP submitted that the offence is of serious nature. Specific role has been attributed to the applicant. He has subjected the complainant to ill-treatment. Nature of harassment caused to the complainant amounts to physical and mental cruelty. The victim was subjected to sexual harassment by the co-accused. They were allowed entry in the house by applicant. The applicant and the co-accused used to pour burning wax on the person of the complainant. Several other acts are attributed to the applicant which are heinous. Daughter of

complainant was sexually harassed. Hence, application may be rejected.

7] The learned counsel for the complainant supported the submissions of learned APP. Affidavit in reply is filed opposing relief in this application. He submitted that the complainant and the daughter were both subjected to sexual harassment. The co-accused had inappropriately touched the minor daughter of the complainant. She was repeatedly subjected to harassment. There were incidents of outraging of modesty of the daughter. The complainant has been ill-treated since several years causing physical and mental cruelty to her. The co-accused has subjected daughter of complainant to sexual harassment. The offences are of serious nature.

8] The first informant is the wife of the applicant. The marriage is of the year 2007. On perusal of FIR, it is apparent that specific overt act has been attributed to the applicant. The complainant has alleged that the applicant had illicit relations with the co-accused Meena. She used to visit the house. The applicant and co accused had removed her clothes and poured wax from burning candle on her person. The applicant also used to scare her with lizard. The overt act attributed to the applicant is of serious nature.

9] Supplementary statement of the complainant was recorded on 13th May, 2021. There is improvisation in the said statement. The

nature of sexual harassment to daughter by the co-accused Meena and Anna were made for the first time which were not appearing in the FIR. Statement of the minor victim was recorded on 12th April, 2021 under Section 161 of Cr.Pc. It was stated that four years ago her father brought lady in the house (Meena). She used to visit house in night and assault her mother. Thereafter Anna visited house with her. He used to abuse and assault her mother. This fact is not reflected in statement of complainant. Both had touched her body which was bad touch. She has not specified that co-accused were touching her chest or private part as stated by complainant. Role attributed to Meena and Anna is not referred by complainant. The period of harassment is not mentioned. Statement of complainant was recorded under section 164 of Cr.PC. on 26.4.2021. Several allegations are made against husband, father-in-law and mother-in-law. There are improvisation qua role of Meena and Anna. There is no allegation that minor daughter was subjected to sexual harassment by touching her private part by Anna. Statement of minor daughter of complainant was recorded under section 164 of Cr.PC. In the said statement dated 26.4.2021, there is reference of sexual harassment to her. Those allegations were not reflected in the previous statement. The improvised role is attributed to co-accused Meena. The applicant used to tie lizard on the person of mother.

10] The statement of land-lady and her sons were recorded.

Statements of neighbours were also recorded. They have not referred to any quarrel. They have not referred to entry of the co-accused in the premises of the complainant. Statement of Priyanka Chawda dated 8.4.2021 reflects that complainant and her husband were residing on rental basis in her house. She did not hear any quarrels between them. She had not seen Meena and Anna entering in house of complainant and quarreling with her. Similar statement of two sons of Priyanka Chawda were recorded. The statements of neighbours Manoj Pokhare and Nalini Shah do not refer to presence/entry of co-accused Meena and Anna in complainant's house. Nalini Shah has stated that complainant had not disclosed any harassment by Meena and Anna. Complainant had quarrels with husband.

11] Although there are discrepancies qua role of co-accused it can be seen from the version of the complainant that specific allegations are made against the applicant about subjecting her to harassment which amounts to cruelty and mental harassment. The acts like urinating in mouth, using lizard to scare her, pouring burning wax on her person are serious allegations. Several allegations reflected in FIR against applicant are sufficient to reject this application.

11] In the circumstances, the applicant is not entitled for any relief under Section 438 of Cr.PC.

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Anticipatory Bail Application No. 882 of 2021 is rejected and
stands disposed of.

grt/-

[PRAKASH D. NAIK]
JUDGE