

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1029 OF 2021

Pradip Bhagwan Devre
Versus
The State of Maharashtra
...

Mr. Joydeep Chatterji, Advocate for applicant
Mr. S.B.Narwade, APP for respondent.

CORAM : V.G. BISHT, J.

RESERVED ON : 27.9.2021.

PRONOUNCED ON : 29.9. 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 697 of 2021, registered with Police Station, Nandurbar City, Dist. Nandurbar for the offences punishable under Sections 170, 343, 354, 406, 418, 420, 506 of IPC and under Section 67(a) of the Information Technology Act.

2] The prosecution case is that, the informant at the relevant time was working as police constable attached to Head Quarter Gadchiroli and was unmarried. She got herself registered on-line with Maitrin Marriage Bureau, Mumbai. The applicant after seeing informant's matrimonial profile approached her and then they developed proximity.

The prosecution alleges that the informant was deceived by the applicant and was induced to part with an amount of Rs. 49,500/- by withdrawing the same through ATM from her account with Bank of Baroda and was further she was asked to purchase a Bullet Motorcycle worth Rs. 2,26,000/- for the applicant. The informant further alleged that the applicant might have stored her obscene photographs in his mobile. Lateron, she realized about her deception at the hands of the applicant and accordingly, lodged a report.

2] Mr. Chatterji, learned counsel for the applicant, submits that the plain reading of FIR would show that ingredients of Section 67A of the Information Technology Act, 2000 ("I.T. Act" for short) are missing. As far as the allegations of her obscene photographs being captured in the mobile of the applicant is concerned, the learned counsel invited my attention to few lines of the FIR wherein the informant has expressed an apprehension of her obscene photographs being stored in the mobile of the applicant. According to learned counsel, having regard to the nature of the allegations, custodial interrogation of the applicant is not necessary. The learned counsel also showed readiness of the applicant to furnish mobile of the applicant if ordered to cooperate the investigation by granting benefit of pre-arrest bail.

3] Mr. Narwade, learned APP, on the other hand, vehemently opposed the submissions by contending that not only obscene photographs of the informant were taken by the applicant, but he had indulged in similar activity in the past in respect of other girls also. The learned APP invited my attention to the compilation, wherein, xerox copies of obscene photographs are annexed. The learned APP further submits that the applicant is a habitual offender and in order to

recover the amount of Rs. 49,500/- and mobile of the applicant, his custodial interrogation is necessary.

4] Two major allegations can be seen from the reading of the FIR. Firstly, inducing the informant to part with cash amount of Rs. 49,500/- and also to make her purchase a Bullet Motorcycle worth Rs. 2,26,000/-. Secondly, apprehension of informant that her obscene photographs might have been stored in the mobile of the applicant. As far as the second allegation is concerned, it is rightly pointed out by the learned counsel for the applicant that it does not satisfy the ingredients of Section 67A of the I.T. Act. Section 67A of the said Act contemplates publication or transmission or causing to be published or transmitted in the electronic form any material which contains sexually explicit act. Here, it is not the case that sexually explicit acts pertaining to the informant was in any manner published or transmitted or caused to be published or transmitted or caused to be transmitted in electronic form through the mobile of the applicant. Therefore, prima facie, the ingredients of Section 67A are not fulfilled.

5] As far as the other allegations of inducement and cheating to the tune of Rs. 49,500 and 2,26,000/- is concerned, it may be noted from the pleadings of the applicant that he is working as Head Constable and despite that he indulged in the offence of cheating. Although the prosecution has produced other obscene photographs, but said photographs are not qua the present proceedings. It appears that those photographs are filed with a view to project the precise conduct of the applicant. Be that as it may, prima facie, there appears to be a case of deception and as also storage of obscene photographs of the informant in the mobile of the applicant.

6] Although the learned counsel for the applicant has shown willingness of the applicant to cooperate in the investigation, but having regard to the overall factual aspects of the case and the fact that the applicant is none other than a police head constable himself, in my considered opinion, he does not deserve the benefit of pre-arrest bail.

7] Hence, the following order :-

: O R D E R :

The application is rejected.

**[V.G. BISHT]
JUDGE.**

grt/-