

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

ANTICIPATORY BAIL APPLICATION NO. 1050 OF 2021

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| 1. | Lata w/o Balu Bhise
Age 60 years, Occu: Household | ... | Applicants |
| 2. | Balu s/o Kisan Bhise,
Age 65 years, Occu: Astrologist & Agri. | | |
| 3. | Mothoba s/o Balu Bhise,
Age 40 years, Occu: Astrologist & Agri.
All R/o Kada Karkhana Vasti,
Tq. Ashti Dist. Beed. | | |

VERSUS

- | | | | |
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| 1. | The State of Maharashtra,
Through Police Station Officer,
Ashti Police Station, Tq. Ashti
District Beed. | ... | Respondent |
|----|---|-----|-------------------|

Mr. A. S. Kakade, Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.
Mr. S. J. Salunke, Advocate assists to P.P.

CORAM	: PRAKASH D. NAIK, J.
DATE	: 22nd October, 2021

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure. The applicants are seeking pre-arrest bail in crime No. 234/2021 registered with Ashti Police Station Tq. Ashti District Beed for the offences under Sections 376, 323, 504, 509, 120(B), 34 of the Indian Penal Code (for short "IPC").

2. The First Information Report (for short "FIR") was registered on 2nd August, 2021 against the applicants and Deva Vishnu Yadav (Accused No.1). It is alleged that the complainant's marriage was performed with applicant No.3 about 15 years ago. In June, 2016, the applicants, in connivance with each other, had arranged Test Tube Baby for her without informing about it to the complainant. In December, 2020, daughter was born to her. The complainant's mother-in-law (applicant No.1) informed her that her husband (applicant no.3) cannot become father and the daughter was born through Test Tube. While her husband was out of station, the mother-in-law told her that their family need a son and she should maintain physical relationship with accused No.1. The complainant refused to do so. She was assaulted. Due to harassment, she agreed to do so on 03.12.2020. On 03.01.2021 onwards she had physical relationship with accused No.1 under coercion of applicant Nos.1 and 2. Applicant No.1 used to guard by sitting outside the room. After few days, it was revealed that complainant had conceived. She was provided a Cellphone. This fact was not known to her husband (applicant No.3). Thereafter, applicant No.3 saw Phone No. of accused No.1 in the Cellphone of complainant. She was abused and assaulted. Applicant No.3 told her to terminate pregnancy. The complainant refused to do so. Applicant No.3 called brother of complainant. Complainant's brother took her to her parental home. FIR was registered on 2nd August, 2021.

3. The applicants had preferred application for anticipatory bail before the Court of Sessions. The said application was rejected on 27th August, 2021.

4. The contention of the applicants is that the entire FIR is concocted. The complainant was never forced to have any relationship with accused No.1. The incident is dated 3rd January, 2021 and the FIR is lodged on 2nd August, 2021. Section 376 IPC cannot be applied against the applicants. Marriage between applicant No.3 and the complainant was performed 15 years ago. According to the complainant, applicant No.3 was not aware about the arrangement made with accused No.1. It is difficult to believe that the complainant had accepted the demand of applicant Nos. 1 and 2 and maintained relationship with accused No.1. Custodial interrogation of the applicants is not necessary. Applicant Nos. 1 and 2 are senior citizens. The applicants have been falsely implicated in this case. Accused No.1 was arrested and granted bail vide order dated 24.09.2021.

5. Learned A.P.P. submitted that offence is of serious nature. The complainant was forced to have physical relationship with accused No.1. Applicant No.3 was forcing the complainant to terminate pregnancy. Accused No.1 had physical relationship with complainant at the instance of applicants. Complainant was abused and assaulted. The applicant Nos. 1 and 2 had threatened the complainant to withdraw the

complaint. The victim is pregnant. She has been medically examined. DNA samples of accused No.1 and victim were sent for examination. DNA sample of applicant No.3 is required to be obtained. Statement of victim is recorded under section 164 (5) of Cr.P.C. Statement of brother of victim has been recorded. Custodial interrogation of the applicants is necessary.

6. Learned counsel for the complainant supported the submissions of prosecution. He submitted that accused were involved in offence. Threats were issued to victim to withdraw the complaint.

7. From the tenor of the FIR it is apparent that complainant was married to applicant No.3 about 15 years ago. According to the complainant, applicant No.3 was kept in dark about the relationship with accused No.1. Applicant Nos.1 and 2 had allegedly coerced the complainant to have physical relationship with accused No.1. According to the complainant she agreed to have relationship with accused No.1 on account of harassment of applicant Nos. 1 and 2. She had physical relationship with accused No.1 from 3rd January, 2021.

8. The victim was allegedly forced to maintain physical relationship in December, 2020. The victim did not complaint about it. She did not inform about such coercion to her brother. According to victim she agreed to have physical relationship with accused No.1 on 03.12.2020. The FIR was lodged after applicant No.3 protested and

sent her to her parental home. According to complainant applicant No.3 was not aware about such arrangement. The demand made by applicant Nos. 1 and 2 was not informed by complainant to her brother to retaliate against such conduct. The first incident of physical relationship had occurred on 3rd January, 2021. The FIR was registered after the applicant No. 3 had allegedly forced her to terminate the pregnancy. Admittedly the applicant No.3 had not played any role in the alleged arrangement. The complainant has also alleged that she had provided a Cellphone by the accused and that applicant No.3 saw the Phone No. of accused No.1 in the cellphone of complainant. Thus, it appears that the complainant was having communication with accused No.1 through cellphone. The CDR has not been collected by the Investigating Officer.

9. Accused No.1 Deva Yadav allegedly had physical relationship with the complainant. He was arrested and granted bail by the Court of Additional Sessions Judge, Beed by order dated 24.09.2021. The said order mentions that the report of medical examination of the victim prima facie showing no external injuries. Medical examination of applicant No.3 was conducted and opinion suggests that from the examination, there is nothing to suggest that he is incapable of performing sexual intercourse. Complaint dated 12.08.2021 about threat was alleging threats by other persons.

10. In the light of aforesaid facts and circumstances, the applicants need not be subjected to custodial interrogation. Hence, I pass the following order :-

ORDER

- i. Anticipatory Bail Application No. 1050 of 2021 is allowed.
- ii. In the event of arrest of the applicants in connection with Crime No. 234 of 2021 registered with Ashti Police Station, Dist. Beed, the applicants be enlarged on bail on furnishing PR Bond in the sum of Rs. 25,000/- each, with one or two sureties in the like amount.
- iii. The applicants shall appear before the I.O. on 27th, 28th, 29th of October, 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called by the I.O. till filing of charge sheet.
- iv. The application stands disposed of.

(PRAKASH D. NAIK, J.)

JPC