

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

901 ANTICIPATORY BAIL APPLICATION NO.1268 OF 2021

SANDIP GULABRAO CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. J.V. Deshpande and Mr. S.N. Dudhate,
Advocates for the applicant.
Mr.S.B. Narwade, A.P.P. for respondent - State.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 25-11-2021

ORDER :

1. The applicant is apprehending arrest in Crime No.209/2021 registered with Basmat Rural Police Station, District Hingoli for the offences punishable under Sections 323, 354, 354(A), 498-A, 377, 504, 506, 507 read with Section 34 of the Indian Penal Code (for short "I.P.C."). The First Information Report (for short, "F.I.R.") was lodged on 27th September 2021.

2. The complainant is the wife of the applicant. Their marriage was performed on 17th February 2019. The F.I.R. has been registered against 11 persons. The complainant has alleged that her father had spent huge amount in the marriage. In spite of that the accused were demanding amount of Rs. 16,00,000/- for purchase of new car. The complainant was physically and mentally harassed and she was abused and assaulted. Her father-in-law had sexually harassed her and committed act of outraging her modesty. Brother-in-law used to show her obscene video. The complainant had

stayed with her husband at some point of time in Navi Mumbai. She was subjected to unnatural sex. The husband recorded video and threatened her that the same would be made viral. On 13th March 2020 child was born out of the wedlock. On 4th October 2020 her husband filed petition for divorce in the Court. She had joined the husband on 10th January 2021. However, she was ill-treated and subjected to unnatural sexual assault. The husband used to blackmail her about obscene video. She was given tablets for termination of pregnancy. On 12th July 2021 she was forced to leave matrimonial home. On 30th July 2021 the mother-in-law threatened the complainant. F.I.R. was lodged on 27th September 2021.

3. Accused applied for anticipatory bail before the Sessions Court. The application preferred by all the other accused was allowed. However, the application of the applicant was rejected by order dated 8th October 2021.

4. Learned Advocate for the applicant submitted as follows:

(i) The allegations in the F.I.R. are concocted. The complainant had hardly stayed with the husband. The F.I.R. was lodged against several persons. Accused Nos. 6 and 11 were minors.

(ii) The applicant had filed Hindu Marriage Petition for restitution of conjugal rights on 5th October 2020. He also filed missing complaint on 13th July 2021 as the complainant was missing from the house alongwith the child. The application preferred by the other accused was allowed although the allegations were attributed to them.

(iii) The allegations in the F.I.R. are of general nature. The period of alleged incidents is not reflected in the F.I.R.

(iv) The complainant had participated in celebration of birthday of the applicant. The father of the applicant had lodged complaint before the Court against the complainant and her relations on 9th September 2020.

(v) N.C. complaint was filed by the complainant on 13th July 2021 against the applicant and others. The said complaint is completely silent in respect of the allegations, such as, outraging modesty or unnatural sex.

(vi) Medical evidence does not support the allegations in the F.I.R. Cell phone of the applicant has been seized by the police. There is no evidence of recording of obscene video.

(vii) The allegations in the F.I.R. are vague and does not specify the dates on which the alleged incident had occurred. The allegations therein are concocted. The differences are on account of matrimonial discord. Custodial interrogation of the applicant is not necessary.

5. Learned A.P.P. submitted that the allegations in the F.I.R. are of serious nature. The complainant was subjected to physical and mental cruelty. There was demand of money. There were abuses and assault by the accused. There is sexual harassment caused to her by the accused. The applicant had subjected her to injuries. There were threats of making the obscene video viral. The complainant was subjected to unnatural sex. Father-in-law was involved in outraging the modesty of the complainant. Considering the nature of the allegations, the applicant is not entitled for anticipatory bail in exercise of powers under Section 438 of the Code of Criminal Procedure. One more case was

registered against the applicant in the past for the offence under Section 376 of I.P.C. The application may be rejected.

6. From the tenor of the F.I.R., it is apparent that the marriage between the complainant and applicant was solemnized on 17th February 2019. The complainant had allegedly stayed in matrimonial home with all the family members as well as with the applicant at Navi Mumbai. The complainant has impleaded about 11 persons in the F.I.R. Accused No.1 is the husband, accused No.2 is father-in-law, accused No.3 is mother-in-law, accused No.5 is a lady aged about 75 year, accused No.6 is the brother-in-law, accused Nos.7 and 8 are sisters-in-law of the complainant. Accused Nos. 9, 10 and 11 are the relatives of the accused. Amongst the accused, accused Nos.6 and 11 are minors. The allegations are vague. It is pertinent to note that the other accused were granted anticipatory bail by the Sessions Court. On perusal of the said order, it can be seen that the learned Sessions Judge, while allowing the application of the co-accused, in paragraph 11 of the said order had observed that the allegations against accused Nos.2 to 11 are general in nature and there is delay to register the crime about the alleged incident in which they are shown to be involved. The allegations against the applicant are specific. Considering the allegations against accused Nos.2 to 11, custodial interrogation is not necessary. The applicant had allegedly committed unnatural sex with the complainant, prepared video and threatened the complainant that the video would be made viral. For recovering the

same, the custodial interrogation is necessary.

7. The period of most of the allegations is not specified. The cell phone of the applicant is already recovered and nothing has been brought on record during the investigation that there were any obscene videos recorded by the accused. The applicant had filed petition for restitution of conjugal rights on 5th October 2020. He had also filed complaint on 2nd August 2021 when the complainant was missing. The father of the applicant had filed a private complaint before the Court against the complainant and others on 9th September 2020 alleging the offences under Sections 323, 504 and 506 of the I.P.C. The complainant had filed N.C. complaint on 13th July 2021 for the offences under Sections 323, 504 and 506 of I.P.C. The incident in the said complaint had allegedly occurred on 8th July 2021. It was alleged that her husband is addicted to liquor. The said complaint was filed against the applicant. She was assaulted and abused by the applicant. The allegations of unnatural sex or other harassment reflected in the F.I.R., are absent in the said complaint. There is no other previous complaint in respect to the alleged incidents mentioned in the F.I.R.

8. Learned A.P.P. has relied upon the previous case registered against the applicant. The documents relating to that are part of the investigation papers. The said F.I.R. was registered on 8th February 2012. It appears that the applicant was student at that point of time. From the tenor of the said complaint it appears that the complainant therein was in relationship with the applicant.

9. In the light of the aforesaid factual matrix, the applicant need not be subjected to custodial interrogation. Hence, I pass the following order.

ORDER

- (i) ABA No. 1268 of 2021 is allowed.
- (ii) Interim order dated 26th October 2021 is confirmed.
- (iii) In the event of arrest of the applicant in Crime No.209/2021 registered with Basmat Rural Police Station, District Hingoli, the applicant be released on bail on executing P.R. bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.
- (iv) The applicant shall appear before the Investigating Officer as and when called for, till filing of the charge-sheet.
- (v) The application stands disposed of.

(PRAKASH D. NAIK, J.)

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