

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.352 OF 2019

Mrs. Rekha Avtar Rajput Applicant

Vs.

The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 327 OF 2019**

Smt. Kalpana Thackersay Savla Applicant

Vs.

The State of Maharashtra & Ors. Respondents

Ms. Mallika Ingale h/for Rekha Rajput i/by Bhanudas Jagtap for Applicant
in ABA No. 352 of 2019.

Mr. Amol Patankar for Applicant in ABA No. 327 of 2019.

Mr. Mohan Pillai for Intervenor.

Ms. Sharmila S. Kaushik, APP for State.

Coram : NITIN W. SAMBRE, J.

Date : 23rd JULY, 2021

P.C.:

1. In both these applications, the applicants/females are seeking pre-arrest bail in Crime No.46 of 2017, registered with Kandivali Police Station, punishable under Sections 328, 376, 384 read with 34 of the Indian Penal Code.

2. The prosecution case in brief is, the complainant Jayashree alleged that the applicant Rekha alongwith other applicant Kalpana introduced her to other three male co-accused. The applicants alongwith these three male accused, took the complainant to the house of Kalpana Savla, where the male accused sexually assaulted her and video clip of the same was drawn. It is also claimed in the F.I.R. that the said video clip is used for blackmailing the complainant and accordingly jewellery worth Rs.11,50,000/- and cash amount of Rs.3,00,000/- was extracted.

3. As far as the case of the prosecution is concerned, three male accused were already arrested and subjected to custodial interrogation. As far as these three male accused are concerned, nothing incriminating as has been claimed in the F.I.R. is recovered.

4. In the aforesaid backdrop, both the Counsel would urge that there is unexplained delay of about more than four years in lodging the F.I.R.. From the language employed in the F.I.R., it is also claimed that the contents thereof are quite vague. As such in the aforesaid backdrop particularly about the non-recovery of incriminating material from male co-accused, nature of allegations, against the applicants, falsity of the crime should be inferred. Learned counsel for the applicants would further urge that the applicants are under interim protection of this Court for last more than two years and have reported the Investigating Officer. As such, according to him, the custodial interrogation of the applicants is not warranted.

5. Learned APP assisted by Mr. Pillai, learned counsel appearing for the Complainant would urge that the custodial interrogation of the applicants is very much required as the cash amount and jewellery is yet to be recovered. Apart from above, it is claimed that the mode and manner of the commission of offence is also required to be looked into.

6. Considered rival submissions.
7. As far as delay in lodging F.I.R. is concerned, no explanation whatsoever is tendered by the complainant. Apart from above, it is noticed that the complainant herself has operated locker on 16th July, 2013, 7th December, 2013, 31st December, 2013, 6th January, 2014 and 11th January, 2014, whereas her husband appears to have operated locker with Dena Bank on 2nd December, 2013 and 5th February, 2015 onwards.
8. As such, it can be inferred that the complainant has already operated locker on 17th and 31st December, 2013, whereas in the F.I.R., she is mentioned only about operation of locker once that too in December,
9. No explanation it is coming forward as to whether the operation of locker onwards in the month of December and thereafter again in January i.e. 6th and 11th.

10. Apart from above, though the complainant claimed to have repeatedly visited with the applicant to vegetable vendor, the statement of vegetable vendor is not recorded to confirm the same. The video of the complainant in compromise position was recorded as claimed by the prosecution, which was used for the purpose of blackmailing the complainant, the custodial interrogation of the three male accused, who claimed to have actively played role in the commission of offence, has no resulted in discovery of incriminating material viz. Cash, jewellery, mobile phones etc.

11. Though the complainant has specifically referred above receipt of the amount from her brother-in-law Dinesh who is residing in U.S.A. through one Mr. Babulal, said Babulal has not supported the case of the complainant. Even the visit of the complainant to the hotel alongwith co-accused Pankaj and Nitin is also not supported by any evidence. Even the CCTV footage from the hotel are also not recovered so as to establish the presence of the accused persons.

12. In the aforesaid backdrop, the fact remains that there is unexplained delay in lodging the F.I.R., the very statement of the complainant in the F.I.R. is contrary to the evidence collected during the investigation. Hence false implication of the applicants cannot be ruled out.

13. There are no criminal antecedents against the applicants as is reported.

14. In that view of the matter, the ad-interim protection ordered by this Court is confirmed. Hence, the following order :

O R D E R

- i) The applications are allowed.
- ii) In the event of arrest in Crime No. 46 of 2017 for offences punishable under Sections 328, 376, 384 read with 34 of the Indian Penal Code, registered with Kandivali Police Station, the applicants be released on bail on their executing P.R. bonds of Rs.25,000/- each with one or two sureties in the like amount;

- iii) The applicants shall attend the Investigating Officer on 3rd, 5th and 9th August, 2021 between 10.00 am. to 12.00 pm. and thereafter as and when directed;
- iv) The applicants shall not influence the prosecution witnesses or tamper with the evidence.

(NITIN W. SAMBRE, J.)