

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

ANTICIPATORY BAIL APPLICATION NO. 2038 OF 2021

1. Ankit Ramchandra Jaiswal
2. Anandkumar Ramchandra Jaiswal ... applicants

Versus

The State of Maharashtra ... Respondent

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Mr. Saurabh Butala a/w Mr. Harshad Sathe, Advocate for the applicants.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Yashwant Patil, (A.P.I.) Rabale Police Station, Present.

Ms. Anchal Jaiswal, Complainant in person, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th SEPTEMBER, 2021

PER COURT:

1. The applicants are apprehending arrest in C.R. No. 150 of 2021 registered with Rabale MIDC Police Station, Navi Mumbai for offences under Sections 376, 376(D), 377, 504 & 506 r/w Section 34 of Indian Penal Code (for short “IPC”). Subsequently, Section 498-A of IPC was added. The FIR was registered on 9th June, 2021.

2. The prosecution case is that the applicant No.1 is the husband and applicant No.2 is brother-in-law of complainant. The

marriage of complainant was performed with applicant No.1 on 3rd March, 2020. Since August, 2020 complainant is residing at her parental home. Immediately after marriage she was abused, threatened and assaulted. She was told to leave matrimonial house. The complainant conceived. Her father took her to doctor for treatment. Thereafter, she was taken to Shivaji Hospital for treatment. Harassment continued. On 28th July, 2020 after dinner she slept. Husband did not return home till late night. She called him and he told her to keep the door of bedroom open. Complainant, mother-in-law were sleeping in the hall. At about 02.35 Hrs. her father-in-law entered her bedroom. He was followed by mother-in-law and brother-in-law. They abused her. Mother-in-law lifted her maxi. Brother in law and mother in law caught her hands and legs. Father in law committed forceful sexual intercourse. The accused attempted oral sex. Thereafter, father-in-law caught her hands and brother-in-law sexually assaulted her. Complainant informed the incident to her husband. He was under influence of liquor. He subjected her to physical relationship without her consent. He threatened her that he has video recorded the act and if she disclosed the incident to anyone, the video would be made viral. She did not disclose the incident to anyone. On 3rd August, 2020, complainant was sent to her parental home for

Raksha Bandhan. She was not taken back to matrimonial home. On 3rd August, 2020, the accused were questioned by parents of complainant. They were assaulted and complaint was lodged against them at Rabale Police Station.

3. The applicants and their mother had preferred an application for anticipatory bail before the Sessions Court by order dated 18th August, 2021, relief was not granted to applicants and their mother was granted anticipatory bail. While rejecting their application, learned Sessions Judge had observed that medical examination of applicant No.2 is necessary. Statement of complainant is yet to be recorded under Section 164 of Cr.P.C. Mobile is required to be recovered from applicant No.1 to ascertain video recording.

4. Learned counsel for the applicants submitted that the case of the prosecution is false. The allegations are concocted. The alleged incident of sexual assault had occurred on 28th July, 2020. However, the FIR has been registered on 9th June, 2021. There is no explanation for delay in registering the FIR. Prior to registration of FIR and prior to the alleged incidents several complaints were filed at the instance of the applicants to the Police against complainant and her relatives. The applicants are willing to cooperate with

investigation. The father of applicants had expired on 26th July, 2021. He was unwell since August-2020. The complainant and her brother had been threatening the applicants and family members using abusive language. The chats of complainant are annexed to the application. Complainant was insisting that applicant No.1 to live separately from in laws. He refused. Complainant abused and assaulted her in laws.

5. Learned APP submitted that the investigation is in progress. Section 498-A has been invoked subsequently. The medical examination of both the applicants is required to be conducted. Considering the allegations in the FIR, the applicant No.1 is required to handover his cell phone to the Investigating Officer.

6. Learned counsel for the applicants submitted that the applicants would cooperate with investigation. They would make themselves available for medical examination. The applicant No.1 would handover his cell phone to the Investigating Officer for the purpose of investigation.

7. In the light of the factual aspects and the averments reflected in the FIR it is apparent that, the alleged incident of sexual assault had occurred on 28th July, 2020 and the FIR has been

lodged after a period of about 11 months. The documents annexed to application include complaint sent by applicant No.1 on 5th October, 2020 about conduct of complainant and her plans to falsely implicate them in Court cases. Complaint apprehending thereat to life was sent on 1st December, 2020. The applicant No.1 has lodged N.C. Complaints on 20th December, 2020, 22nd December, 2020 and FIR dated 28th January, 2021 vide C.R. No. 26 of 2021 under Sections 324, 323, 504, 506(2) r/w Section 34 of IPC.

8. The complainant is present in the Court. She has instructed learned APP that the accused have also committed for offence under Section 313 of IPC. It is pertinent to note that the offence under Section 313 of IPC is not invoked in this case. The FIR does not indicate allegations constituting offence under Section 313 of IPC.

9. In the aforesaid circumstances, on certain terms and conditions this application can be allowed.

10. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application No.2038 of 2021 is allowed;

(ii) In the event of arrest of the applicants in connection with C.R. No. 150 of 2021 registered with Rabale MIDC Police Station, Navi Mumbai, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) The applicants shall attend the investigating officer on 23rd, 24th & 27th September, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.

(iv) The applicants shall cooperate in conducting their medical examination.

(v) The applicant No.1 shall handover his cell phone to the Investigating Officer for the purpose of investigation.

(vi) The applicants shall not tamper with the evidence in any manner.

(vii) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)