

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

ANTICIPATORY BAIL APPLICATION NO.39 OF 2022

SANJAY KAMLAKAR CHARTHANKAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the
applicant

Mr. A.M. Phule, APP for respondent Nos.1 and 2

Mrs. Rashmi Kulkarni, Advocate (appointed) for the respondent No.3

Mr. B.S. Chondhekar, Advocate for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 08th FEBRUARY, 2022

PRONOUNCED ON : 09th MARCH, 2022

ORDER :

1 The applicant, who is a practicing Advocate, is apprehending his arrest in connection with Crime No.440/2021 dated 28.12.2021 registered with Jintoor Police Station, Dist. Parbhani, for the offence punishable under Section 376, 354-A, 354-B, 354-C, 506 of the Indian Penal Code, 1860 and under Section 66(E) of the Information Technology Act, 2000.

2 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by

learned Advocate Mr. D.R. Deshmukh for the applicant and learned APP Mr. A.M. Phule for respondent Nos.1 and 2. After notice was served, respondent No.3 did not appear, immediately and, therefore, learned Advocate Mrs. Rashmi S. Kulkarni was appointed to represent her cause. However, it appears that later on learned Advocate Mr. B.S. Chondhekar has filed Vakalatnama for respondent No.3. Therefore, both of them are heard for respondent No.3.

3 It has been vehemently submitted by the learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant that the First Information Report is nothing but a concocted and fabricated version. The applicant belongs to a lawyer's family, whose father was senior legal practitioner and now aged 82 years. The applicant is practicing since 1995 in Jintoor Civil Court. He has good reputation and he has also worked for the Bar Association. The applicant's three daughters and wife are residing at Latur in connection with the education of the daughters. Applicant used to visit at Latur at every weekend. Due to lock-down the daughters and the wife have come down to Jintoor and all of them are residing together. After the normalization of the situation again the daughters and his wife have shifted to Latur. The applicant is residing with his parents. There were two rooms upstairs and two rooms downstairs,

where he has given those rooms on rent. The informant was inducted as tenant along with her husband in June, 2018 and it was on the rooms downstairs they were occupying where one Birajdar was occupying two rooms upstairs. The husband of the informant was working in a cloth shop in Jintoor. Informant was also working as domestic servant at times whenever the parents of the applicant needed the service. The applicant has given his mobile number and has categorically stated that it is a very orthodox/very simple model he is using but his wife using a smart phone and the WhatsApp facility has also been given. The applicant was required to exchange his cell phone in Diwali, 2019. A third person was given financial aid of Rs.5,000/- to Rs.10,000/- through informant's family when it was requested. The relations were of a landlord and tenant and the applicant was busy in his profession. He was surprised to note that First Information Report has been lodged against him. If we consider the contents of the First Information Report, then, the alleged first act is stated to have been done somewhere in 2019, however, she has never lodged a report. Falsity in the report can be seen from the fact that she has not given the phone numbers from which her alleged obscene photos were made viral. She has not given even the number of the applicant. So that it can be inferred that he has made those photographs viral and there could have been an attempt by the applicant that by threatening that he would make those photographs viral he had sexual

intercourses with the informant. A totally concocted story has been given. Even the learned Additional Sessions Judge, before whom the applicant had gone first, has observed that there is delay of almost two and half years from the first alleged date of sexual intercourse. But then went on to say that it was required to be considered as to why the victim avoided the legal action against the applicant. It cannot be stated that because the applicant is in the legal profession the informant would have feared. The applicant is ready to abide by the terms of the bail.

4 Per contra, the learned APP for respondent Nos.1 and 2 as well as learned Advocate Mrs. Rashmi S. Kulkarni appearing for respondent No.3 have submitted that the allegations against the applicant are about committing heinous crime. Though there may be a delay in lodging the report, but that cannot be considered as giving concession or benefit to the applicant. Panchnama has been executed on 04.01.2022 in respect of the photographs which were received by witness Munjaji Daulatrao Sase from mobile No.8459125789. There are 12 nude photos of a lady. It is then required to be investigated that it has connection with the applicant. The investigation is at a very preliminary stage and, therefore, his custodial interrogation is necessary, so that a fair investigation can be made.

5 As aforesaid, there appears to be much delay in lodging the First

Information Report. No doubt, delay can be explained even at a later point of time, but what is expected in such cases is prompt lodging of the First Information Report. If there is no prompt lodging, then, at least explanation should be given explaining the circumstances, why the delay has been caused. The informant is a married lady having two children. She has stated that she resided till June, 2019 in some other house on rent, but as that house got damaged due to rains she went to reside in the rooms owned by the applicant. She states that there were casual talks between herself and applicant initially, but then she says that she could guess that the applicant was watching her with ill intention she started avoiding him. She has quoted an incident that when she was alone, the applicant gone inside her house and tried to drag herself towards him. She then says that she went outside the house and after applicant came outside, he gave threats her that he will drive her out of his house if she discloses the incident to anybody. This kind of thing has been repeated by her in respect of other incidences also. That means, each time she says that she was threatened by the applicant and because of threat she has not disclosed it to her husband. She makes allegations that once the applicant had taken her photographs when she was bathing in nude condition. Then again she says that due to the threat of making those photographs viral, which made her defamation, she has not disclosed to anybody including her husband also. It appears from her First

Information Report that till then she was not doing work of maid servant with the applicant, but then at the time of festival of Mahalaxmi it was told by the applicant that his wife is going to come for the festival and, therefore, she should work as maid servant and then she said that her affirmation was sought after giving threat to made her photos viral. While doing the work of maid servant she says that she was ravished by the applicant twice or thrice. She says that thereafter she herself and her husband left those rented rooms in June, 2020. This shows that she had occupied the rooms on rent belonging to the applicant from June, 2019 to June, 2020 i.e. for one year. After she left the rooms in June, 2020 after about 5-6 months she states that the applicant had sent her photographs in sari, pant shirt and night dress on the mobile of her father. When those photographs were snatched is not stated. Then she went along with her uncle to Jintoor Court and met applicant and asked him, as to why he is sending her photographs to her father. The applicant had stated her in presence of her uncle that since she is of the age of daughter why he would give those photographs. But then when her uncle went aside the applicant gave threat. On 26.12.2021 her uncle told that her nude photographs have been sent by the applicant on the phone of people from their village as well as one Vaibhav Talekar, and she should come to Jintoor. She went to Jintoor and seen those photographs and realized that those were taken by the applicant about a year ago, while she was bathing.

6 Perusal of all the contents of the First Information Report would show that at some places she is intentionally vague and at some places there is no proper explanation by the informant.

7 The police papers would disclose that some part of the investigation has been done. Letter has been given that the CDR of the mobile number of the applicant which he has provided or known to the police has been made, but it appears that it is not yet received. The medical examination of the lady has been done but admittedly it is after so many months. Interestingly one Munjaji Daulatrao Sase appears to have given his mobile to the police, from which about 12 photographs have been copied in pen drive. However, there is no explanation by the Investigating Officer, as to why statement of said Munjaji Sase has not been taken on that day, because that is not part of the police papers supplied to this Court. Statement of one Ashok Talekar, who had also received the photographs, states that he had received those photographs from mobile No.9405847048. These are not the numbers given by the applicant in his application and it is also not the number of whose CDR, SDR and Tower Location has been called. Statement of said Ashok Talekar has been recorded on 28.12.2021 and it appears that till 08.02.2022 there was no attempt by the Investigating Officer to know whose number is this, which has been referred by said Ashok Talekar. Said

Ashok Talekar then says that when the husband of the informant had disclosed that the said number is of present applicant, then, he and the informant had gone to Jintoor Court and met applicant. They had made request to applicant that he should not make the photographs viral. But he is not giving any reason as to why he had not advised the informant that they should go to Police Station. Further he says that since he was not having android mobile, they gave the photographs to Munjaji Sase who was having android mobile and then the photographs from Vaibhav Talekar were deleted. Thereafter, it appears that on 04.01.2022 those photographs were copied from Munjaji Sase's mobile. How far this kind of evidence would be admissible and proved, is a different question, but taking into consideration the entire story narrated in the First Information Report, though it has tried to give picture of a heinous crime, taking into consideration the delay in lodging the report, though opportunity was available; yet, instead of going to police the informant is stated to have contacted the applicant itself allows this Court to come to this conclusion that he needs to be protected.

8 The reputation of the applicant in the society is definitely a point to be considered. Learned APP has expressed anxiety that the said reputation is in fact, hurdle/hindrance in the investigation and there are chances of manipulation, but this apprehension can be tackled with imposing conditions

on the applicant. The reputation of the applicant gives assurance to the Court that he would be available for trial. In this case, since the applicant is a practicing Advocate, definitely, he would be available for trial and his cooperation can be extended to the Investigating Officer. This Court may not reach to the conclusion that the First Information Report is a concocted and fabricated piece of evidence, but since there is delay in lodging the report and also the fact to be considered is, if the applicant had intention to defame the lady for ultimate reason, then he would have made those photographs viral much earlier than the date on which it is alleged to have been made viral in the First Information Report. If he wanted to control all the activities of the informant, then there would have been much advancements earlier and not at this stage. Therefore, with stringent conditions the application deserves to be allowed.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant viz. **Sanjay Kamlakar Charthankar**, in connection with Crime No.440/2021 dated 28.12.2021 registered with Jintoor Police Station, Dist. Parbhani, for the offence punishable under Section 376, 354-A, 354-B, 354-C, 506 of the Indian Penal Code, 1860 and under Section 66(E) of the Information Technology Act,

2000, he be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the evidence of the prosecution, in any manner.

4 He shall co-operate with the investigation and should attend Jintoor Police Station, Dist. Parbhani on every Monday, Wednesday and Friday, between 6.00 p.m. to 8.00 p.m., till filing of charge sheet.

5 He should hand over the mobile set, which he is presently possessing, immediately, to the police on Friday i.e. on 11.03.2020, at the time of his attendance.

6 He should provide his mobile number, if he would change thereafter, to the Investigating Officer and thereafter shall not change the said number till the conclusion of the trial.

7 The fees of the appointed Advocate is quantified Rs.7,000/- (Rupees Seven Thousand only) to be paid by High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)