

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

902 ANTICIPATORY BAIL APPLICATION NO.469 OF 2022

**DATTU LAKSHMAN MANE
VERSUS
THE STATE OF MAHARASHTRA**

Mr.Himanshu S. Gavit, Advocate for the applicant.

Mr.A.M. Phule, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 26.04.2022**

PC :-

01. Heard learned Advocate for the applicant.
02. Learned APP strongly opposed the application. He submits that since the matter is coming for the first time, he is not armed with the papers, however, taking into consideration the contents of the FIR, there is an active role attributed to the applicant. Specific allegations are about committing rape by the present applicant on the prosecutrix. The offence is serious and therefore it does not require sympathy to be shown in favour of the applicant.
03. The contents of the FIR would show that the prosecutrix was employed in the spa at Jalgaon. She has made allegations that though she

was promised some salary, she was given less. The work assigned to her was to masaj the customers visiting the spa and also there were other girls, who were doing the same duty. There were two managers according to her and present applicant is owner of the spa. She has stated that on the day when the applicant had gone to the spa, she was introduced to him and thereafter according to her the applicant had taken masaj from her and thereafter forcibly had sexual intercourse with her. Thereafter, she waited for her salary to be paid. After two days she was told that she should not come on the job. She also states that she asked as to what has happened. Then it was told to her by present applicant that she should either do work at Nashik or Shirdi. On 10.02.2022 the manager also told her to go away from Jalgaon. It is her say that the staff members had thereafter given her harassment and due to fear she had not immediately lodged the report. She states that she had called the applicant on 14.02.2022 on his mobile and told that she would go. She made allegations against the manager also.

04. According to the learned Advocate appearing for the applicant all these contents are false, baseless and against the real fact. The complaint was received from the customers of his spa that she is doing illegal activities with

the customers and therefore complaint application was given to the police station by one Pravin Bhaskar Bhalerao on 01.03.2022. Copy of the same has been made available. Thereafter, some conversation transcript has also been given, which is stated to be between the informant-prosecutrix, present applicant with some other persons and also Whatsapp chats by the informant with the applicant. After pointing all these documents, learned Advocate appearing for the applicant states that all these conversations would show that due to the attitude of the informant and also because of instigation by somebody else, she has taken such step and the real fact is different. There is also no substance in the say of the prosecutrix that though the spa center had promised her salary of Rs.7000/-, she was given only meager amount. The appointment letter of the prosecutrix has been produced on record which shows that she agreed for salary of Rs.5000/-. The register from spa center has also been produced to show the customers which have visited the same. Lastly, it was submitted that the prosecutrix has not undergone the medical test. So also twice the dates were given for recording of her statement under section 164 of Cr.PC., however, she did not remain present. Under such circumstances, custodial interrogation of the applicant is not necessary. He also submits that prior to the application for anticipatory bail filed with the

Additional Sessions Judge, Jalgaon, police used to come for arrest of the applicant. However, thereafter they have not come. However, still there is apprehension in the mind of the applicant that he would be arrested.

05. Since the contents of the FIR are already narrated in the aforesaid paras, they are not required to be reproduced. There is clear statement by the informant that the applicant had forcible intercourse with the prosecutrix in room No.6 of the spa itself. Now as regards the allegations levelled against the informant is concerned, they cannot be considered in this application. First of all as regards alleged conversation is concerned, except transcript, there is nothing on record and when it would be “electronic evidence” as defined under the Indian Evidence Act, unless it is accompanied by certificate under section 65-B of the Indian Evidence Act, it cannot be considered at all. As regards the complaint application that was filed by said Pravin Bhalerao is concerned, it is in respect of some attempt to extort money by four unknown persons and it was then stated that illegal activities are going on in the spa and they should be stopped. Another complaint application is stated to be against the informant. It is to be noted that before this complaint application was given, no notice appears to have been given to the informant and another

fact is that the employer can consider straight way to take action against the erring employee. A copy of affidavit of the informant before the learned Additional Sessions Judge opposing application for anticipatory bail of the present applicant has been made available. It is reiteration of her FIR and she has given explanation that since her son was ill, she could not undergo medical examination. Now, as regards the medical examination is concerned, if it is not done by the Investigating Officer, then ultimately what would be the effect of non-performance of the examination would be considered. The basic nature of the medical evidence in any case is of corroborative nature and not substantial one. Same is the case with the statement under section 164 of the Cr.P.C. Even if the informant does not remain present, it does not allow inference that whatever has been stated in the FIR is false. It would be a very premature thing.

06. Taking into consideration all these reasons, no case is made out for exercise of the extraordinary discretionary relief under section 438 of the Cr.P.C. Present application deserves to be rejected at the threshold. Accordingly, it is rejected.

07. There is deficit court-fee of Rs.75/- on certified copy, which has not been paid. Learned Counsel for the applicant to deposit the same during the course of the day with the office.

[SMT. VIBHA KANKANWADI, J.]