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

BAIL APPLICATION NO.1520 OF 2022

SANTOSH KONDIBA SAVANT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent/State : Ms. V.S. Choudhari
Advocate for Respondent No.2 : Mr. S.B. Ghatol Patil

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CORAM : S.G. MEHARE, J.

DATED : 19th DECEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the prosecutrix.
2. The prosecutrix/wife has levelled wild allegations against the applicant/husband that he used to snap her naked photographs with the help of co-accused after administering her unknown decoction. It has also been alleged that the applicant has extra-marital relation with the co-accused. The co-accused were molesting the minor child. The applicant's anticipatory bail was refused twice.
3. Learned counsel for the applicant would submit that the victim who is the daughter of ASI has cooked the false story to make the offence serious. There is no evidence of the wife of landlord atleast to *prima facie* showing that the co-accused used to visit their house. She was the best witness to support the allegations against the

applicant, but she did not support the prosecutrix. The case has been improved in the supplementary statement. The FIR is delayed by seven months. He has also referred to her conversation with the applicant in which she was consistently abusing the applicant. The reason for lodging the report is a suspicion of having extra-marital relationship with the co-accused. The health and education of the minor girl was never affected. She was treated well. To support his contention, he has placed on record photographs and the progress report of the school of the minor daughter. The observations recorded by this Court in anticipatory bail applications would have no concern with the application to be determined after filing of the charge sheet under Section 439 of the Criminal Procedure Code. The case is apparently false and concocted. The applicant is residing at Aurangabad and the prosecutrix is residing at Nanded. Therefore, there is no possibility of tampering with the prosecution witnesses. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

4. Learned APP has strongly opposed the application. If the allegations levelled against the applicant are considered, he has committed serious offence. He was administering the prosecutrix some unknown decoction and calling his paramour in the room. The allegations are very specific how she has been tortured and ill-treated,

physically and mentally. The tampering with the prosecution witnesses is high in this case. The applicant has no good case for bail.

5. Learned counsel Mr. S.B. Ghatol Patil for respondent no.2/prosecutrix would argue that the facts of the case have already been considered by this Court while rejecting the anticipatory bail. The offence is apparently serious. The applicant remained absconding for a long period. The relatives of the applicant resides in the same locality at Nanded. They have already threatened the prosecutrix and her mother to withdraw the present case. Therefore, tampering with the prosecution witnesses cannot be ruled out. Reading the orders of this Court passed in two anticipatory bail applications of the applicant, he has vehemently argued that the same ratio would be applied. Considering the gravity of the offence and apprehension of tampering the prosecution witnesses, the application deserves to be dismissed.

6. The rules considering the bail under Section 438 of the Criminal Procedure Code cannot be applied for the bail application to be decided under Section 439 and that too after filing of the charge sheet. The reason is simple that in anticipatory bail, the accused has no access to the investigation papers. Only on the basis of FIR, he may argue the case. The law is well settled that filing of the charge sheet is a change in circumstances. Charge sheet gives the material to the accused to go through the accusation and argue the case.

7. In this case, serious allegations have been levelled that the applicant used to call co-accused in the home. They were burning the prosecutrix with fire after administering some unknown decoction. The wife of the landlord has given a specific statement that she never heard the noise of quarrel nor noticed the co-accused coming to the room. She is an independent witness. As far as the admission of the prosecutrix in the hospital as it has been claimed that she was hospitalized for the treatment due to administering the unknown decoction , also does not supports the prosecutrix. The discharge card of a private hospital reveals that the victim was admitted to the hospital for Jaundice. Except this, there is no other evidence before the Court that the prosecutrix was admitted to the hospital for the treatment of administering the unknown decoction. The conversation between the husband and wife placed before the Court reveals that they had very strain relations. They were using abusive words against each other. The reason best known to the prosecutrix why she kept mum for about seven months. However, she has tried to explain that due to the fear of spreading her naked photographs, she tolerated all these atrocities, but that does not inspire confidence. At the most, it can be inferred from the papers that the husband and wife had no good terms since she has suspicion of extra-marital relation with co-accused. Taking into consideration the allegations levelled against the applicant, the possibility of lodging

a false report of threats also cannot be ruled out. That apart, it is a matter of investigation. The investigation has been completed. Nothing is to be recovered from the applicant. The prosecutrix and the applicant resides at two separate places. Therefore, it cannot be accepted that there is possibility of tampering with the prosecution witnesses.

8. For the reasons stated above, the Court is of the view that the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Santosh Kondiba Savant, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.126 of 2021, registered at Pundliknagar Police Station, District Aurangabad for the offence punishable under Sections 498-A, 354-A, 354-B, 376 (AB), 323 read with Section 34 of the Indian Penal Code and under Sections 3, 4, 7, 8 9 (M)(L), 10, 12, 16, 17 of the Protection of Children from Sexual Offences Act, on the condition that he shall not tamper with the prosecution witnesses.

(S.G. MEHARE, J.)