

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1323 OF 2022

Jyotiram Vitthalrao Dhongde

..APPLICANT

VERSUS

The State of Maharashtra and Anr.

..RESPONDENTS

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Mr. Rajendra Deshmukh, Senior Advocate i/by. Mr. Abhaysinh K. Bhosle, Advocate for the applicant.

Mr. N.T. Bhagat, APP for respondent – State.

Mr. S.B. Raje Bhosale, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th NOVEMBER, 2022

ORDER :

1. The applicant apprehends his arrest in Crime No. 312/2022 registered with Mukundwadi Police Station for the offences punishable under section 376(2)(n), 307, 420, 313, 323, 506 of Indian Penal Code, 1860, under section 4 and 25 of Arms Act, 1959 and under section 66(E) of Information Technology Act, 2000. The First Information Report is lodged by the prosecutrix who is aged about 28 years.

2. In short it is alleged in the First Information Report that, prosecutrix married with Shashank Bansod on 13.08.2016.

The applicant used to supply water by tankers to the area wherein the prosecutrix was residing. The applicant used to send water tanker to the house of the prosecutrix. The prosecutrix developed friendly relations with the applicant. Thereafter as there used to quarrel between prosecutrix and her husband Shashank, the applicant took undue advantage of said fact and established friendly relations with prosecutrix. In April-2019, applicant took prosecutrix to Hiranya Resort, Daultabad. There in the lodging room he established physical relations with the prosecutrix. At that time, against the wish of prosecutrix he videographed the sexual act. Thereafter, the applicant started blackmailing the prosecutrix by giving threat to make the video viral. The prosecutrix gave applicant Rs. 3,00,000/- in cash, one cell phone of Samsung company and gold ornaments worth Rs. 35,00,000/-. Thereafter also by blackmailing the prosecutrix, applicant kept physical relations with her against her wish. While keeping physical relations, applicant used to consume liquor and some times used to beat the prosecutrix. As per the demand of the applicant, prosecutrix gave him money to pay the installment of Brezza car, Scorpio, so also to pay his credit card installments. Because of physical relations, the prosecutrix got pregnant. When she disclosed this to the applicant he assured her that he

will marry her. The prosecutrix delivered female child on 23.12.2019. Husband of the prosecutrix came to know that father of the girl child is the applicant. He therefore divorced the prosecutrix on 28.01.2022. After five to six months of birth of the girl child, twice the applicant became pregnant. When she was told this fact to the applicant he forced the prosecutrix to consume tablets due to which the pregnancy of the prosecutrix was terminated. Thereafter on 25.12.2021, applicant had beaten the prosecutrix for which she had to take treatment at Ghati hospital.

On 02.03.2022 when the prosecutrix was in the third month of pregnancy, applicant gave slaps on the stomach of the prosecutrix, due to which she started having labour pain. She was required to be taken to the hospital where doctor disclosed that the fetus is dead. Thereafter again, the prosecutrix asked the applicant about marriage, he refused to marry the prosecutrix and told her that he is in politics and he cannot marry with her.

3. On 10.03.2022 at night, applicant called the prosecutrix in Cannaught area. When the prosecutrix met the applicant, there he threatened to kill the prosecutrix and her

daughter by pointing pistol at her. It is therefore alleged that, by blackmailing the prosecutrix to make the video of physical relations viral, the applicant extracted approximately Rs. 1.5 to 2 Crore from her on different pretext. On these allegations, First Information Report in question is registered.

4. Heard Mr. Rajendra Deshmukh, learned Senior Advocate for the applicant instructed by Mr. A.K. Bhosle, Mr. N.T. Bhagat, learned Additional Public Prosecutor and Mr. Sandeep Rajebhosale, learned advocate for respondent No. 2. Perused the investigation papers made available by learned Additional Public Prosecutor.

5. The learned Senior Advocate strenuously submits that the informant had married twice and she obtained divorce by mutual consent in both the marriages. He submits that the prosecutrix who is adult has kept consensual relations with the applicant. By pointing out the affidavit executed by the prosecutrix on 29.12.2021 he submits that it is the prosecutrix who was insisting for marriage with the applicant. He submits that it appears that there was love affair between the applicant and the prosecutrix, which is clear from the photographs posted

on social media by the prosecutrix and the whatsapp chats exchanged between the applicant and the prosecutrix. Many times, the prosecutrix has booked hotel room for physical intimacy with the applicant. Further by relying upon divorce decrees of the prosecutrix from first and second marriage he submits that the prosecutrix has suppressed the fact of first marriage. By relying upon the CCTV footage dated 10.09.2022, he submits that in fact the prosecutrix visited the house of the applicant with her husband Shashank. This shows that the prosecutrix herself was after the applicant for marriage. He submits that abortion of the prosecutrix is spontaneous abortion and the applicant cannot be held responsible for the same. He further submits that there are various bank transactions between the applicant and the prosecutrix which show that they were used to send money to each other. He submits that the applicant is working as Supervisor in Water Supply Department on contract basis and he is income tax payee and he will not abscond if protection is granted to him.

By pointing out NCR No. 1462/2021 lodged by the applicant on 25.10.2021 against the prosecutrix, wherein it is alleged that the prosecutrix went to the house of the applicant on 23.12.2021 and abused his parents and told them that she

has friendship with the applicant and they should ask the applicant to stay with her otherwise she will defame them in the society. On 24.12.2021 at about 11.30 pm, the prosecutrix met the applicant and told him that when he has friendship with her, why he is not meeting her daily. The prosecutrix thereafter abused him and bet him with slaps and fists. He therefore submits that this supports the contention of the applicant that the applicant was pestered by the prosecutrix. He therefore submits that taking into consideration the allegations made in the First Information Report, the case is that of consensual relations between two adults and therefore, applicant's custodial detention is not necessary in the present case and the applicant deserves protection.

6. In support of his arguments, he relied on **Mandar Deepak Pawar Vs State of Maharashtra**, 2022 Livelaw (SC) 649, **Sumit Siddaramappa Patil Vs. State of Maharashtra**, (Bom) ABA 1618/2015, **Criminal Petition No. 5704 of 2022** (Andhra Pradesh High Court), **Ansaar Mohammad Vs. State of Rajasthan**, 2022 Livelaw (SC) 599, **Pragnesh Harshadbhai Patel Vs. State of Gujrat**, Criminal Miscellaneous Application No. 11992/2022 (Gujrat High Court), **CAPT Simranjit Singh Sambhi Vs. State**

(NCT of Delh) & Ors., 18641/2021 (High Court of Delhi), Gurbaksh Singh Sibbia Vs. State of Punjab, (1980) 2 SCC 565, Sidharam Satlingappa Mhetre Vs. State of Maharashtra & Ors., (2011) 1 SCC 694, Bhadresh Bipinbhai Sheth Vs. State of Gujrat & Ors, (2016) 1 SCC 152 and Sushila Agrwal & Ors. Vs. State (NCT Delhi) & Ors., (2020) 5 SCC 1.

7. Per contra, the learned Additional Public Prosecutor vehemently opposed the application by relying upon First Information Report and supplementary statement of the prosecutrix. He submits that there is sufficient material on record to show that the applicant threatened the prosecutrix by pointing pistol at her. The investigation is at preliminary stage and it is clear that the applicant blackmailed the prosecutrix by threatening to make video of their sexual act viral and has extracted huge amount from the prosecutrix. The pistol is to be recovered from the applicant, so also the cars purchased by the applicant from the prosecutrix and money extracted from the prosecutrix. Therefore, he submits that the application may be rejected.

8. The learned advocate for respondent No. 2 adopted

the arguments of learned Additional Public Prosecutor. He submits that under the threat of making video of sexual act viral huge amount and gold ornaments of Rs. 35,00,000/- are extracted by the applicant from the prosecutrix, and forceful sexual relations with the prosecutrix were kept by the applicant. He therefore submits that applicant does not deserve protection under section 438 of Cr.P.C. In support of his submissions, he relied on *Sunil Ramchandra Sharma Vs. State of Maharashtra*, 2021 SCC OnLine Bom 10064.

9. From perusal of First Information Report and the investigation papers it is clear that serious allegations are levelled against the applicant. The applicant has videographed the sexual act between him and the prosecutrix and blackmailed her by threatening to make said video viral. By bank transactions huge amounts are transferred from the account of prosecutrix in the account of the applicant, which prima facie support the allegations of extortion by the applicant. The allegation of prosecutrix about threat to kill her and her daughter given by the applicant by pointing pistol at her is supported by the police statements of some of the witnesses to whom the prosecutrix disclosed the said incident.

10. In view of material collected during the investigation, custodial interrogation of the applicant is necessary for recovery of mobile phone, pistol and gold ornaments and for the purposes of effective investigation.

11. In view of above and considering the serious allegations levelled against the applicant, I am not inclined to grant discretionary relief in favour of the applicant.

12. Citation in *Mandar Pawar* (supra) and *CAPT Simranjit Singh Sambhi* (supra) are in respect of quashing of First Information Report lodged for the offences punishable under section 376(2)(n), 417, 323 etc. of IPC. These decisions cannot be said to be applicable for consideration of a prayer for per-arrest bail.

13. Citation in *Sumit Patil* (supra) and *Ansaar Mohamad* (supra) pertain to grant of bail in offences punishable under section 376(2)(n), 377, 506 of IPC. Considering facts of case in hand, these rulings cannot be said to be of any help to the applicant.

14. Decision in *Pragnesh Patel* (supra) is in respect of regular bail.

15. Rulings in *Gurbaksh Singh Sibbia* (supra), *Sidharam Mhetre* (supra), *Bhadresh Sheth* (supra) and *Sushila Agrwal* (supra) lay down the principles to be considered while considering application under section 438 of Cr.P.C. There cannot be any dispute about principles set out in these rulings. Principles set out in the aforesaid ruling are to be applied to the facts and circumstances of each case. In the present case custody of the applicant is necessary for effective investigation and recovery. Hence, these rulings are of no help to the applicant.

16. For the aforestated reasons, applicant does not deserve discretionary relief of protection under section 438 of Cr.P.C. The application is therefore rejected.

[NITIN B. SURYAWANSHI, J.]