

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1429 OF 2022

Shaikh Maksood Dilawar Shaikh

...Applicant

Versus

The State Of Maharashtra & Another

...Respondents

Mr. M.P. Tripathi, Advocate for the applicant.

Mr. S.P. Sonpawale, APP for State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th NOVEMBER, 2022

ORDER :

1. The applicant apprehends his arrest in connection with Crime No. 404/2022 registered with Nanalpeth Police Station for the offences punishable under section 376, 376(2)(f), 376(2)(n), 323, 504, 506 read with 34 of Indian Penal Code, 1860.

2. First Information Report in question is lodged by the sister-in-law of the applicant alleging that brother of the applicant who was husband of the informant expired in accident on 30.03.2015. She has son Shaikh Aayan- aged 16 years and daughter Adiba aged 13 years. After death of her husband,

victim was staying at her in-laws house. After death of her husband, after about two months, applicant forcibly established physical relations with her. When she disclosed the said fact to her father-in-law he refused to interfere and advised the victim to do according to the wish of the applicant. Even her complaints in this behalf to the sister-in-law and others were not heeded. At times, victim was being taken to the lodge and applicant used to produce Aadhar card of his wife on which he has affixed photograph of the victim and he used to take room in the lodge and ravish the victim there. The applicant used to threaten the victim that if she refuses to keep physical relations with him, he will kill her son Aayan and daughter Adiba. At the time of physical relations, father-in-law, mother-in-law and sister-in-law used to take Aayan and Adiba outside the house. It is therefore alleged that the applicant against the will of victim forcibly kept physical relations with her from the year 2015 till the year 2022.

3. Heard the learned advocate for the applicant and learned Additional Public Prosecutor for Respondent/State. Perused the investigation papers.

4. The learned advocate for the applicant submits that

the victim has filed Regular Civil Suit No. 264/2022 in the month of July-2022 against the in-laws, including applicant, wherein she has sought partition of the property. The applicant and other defendants appeared in the suit and filed their written statement on 17.08.2022 thereby denying the claim of the victim. With a view to pressurize the in-laws in civil suit, the applicant is falsely implicated in the present crime. Therefore, he submits that prima facie it is clear that the applicant is falsely implicated in the present crime and therefore, the applicant deserves protection.

5. On the other hand, learned Additional Public Prosecutor by relying on investigation papers submits that the applicant has committed serious offence and the allegations of the victim are supported by statements of son Aayan and daughter Adiba. The custody of the applicant is necessary for the purposes of effective investigation, therefore, application be rejected.

6. Perusal of investigation papers reveals that in the statement of Aayan and Adiba they have specifically stated that whenever applicant used to visit their house, their grandfather,

grandmother or aunt used to take them outside the house for a considerable period and many times the applicant used to take the victim out. This supports the allegations made by the victim in the First Information Report.

7. The investigating agency requires custody of the applicant to secure Aadhar card of his wife, on which he has affixed photograph of the victim. Taking into consideration the serious allegations and the fact that for effective investigation presence of the applicant is necessary, this Court is of the opinion that the applicant is not entitled for protection. The application is therefore rejected.

[NITIN B. SURYAWANSHI, J.]