

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

ANTICIPATORY BAIL APPLICATION NO.1518 OF 2021

LAHU SHIVAJI PAWAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.S. Barlota, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1538 OF 2021

ANJUBAI RAHUL RATHOD AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Panale, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1447 OF 2021

RANUBAI @ RANI W/O JAYPAL CHAVAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Panale, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 13th JANUARY, 2022

PRONOUNCED ON : 09th FEBRUARY, 2022

ORDER :

1 All the applicants are apprehending their arrest in connection with Crime No.198/2021 dated 27.05.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 354, 354-B, 326-A, 324, 323, 509, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.S. Barlota and Mr. S.S. Panale for the respective applicants and learned APP Mr. N.T. Bhagat for the respondent.

3 The learned Advocates appearing for the applicants vehemently submitted that the First Information Report is nothing but result of the revenge. The informant intends to take and also resting on a concocted story. The informant might be sustained certain injuries but she has tried to encash the situation. Informant-prosecutrix is aged 35 and she states that since last 09 years she is residing with her second husband. She has the knowledge

that the husband is already married. She also states that the first wife of the husband used to come along with her children as the husband used to stay with the informant always and used to give threat to the informant that she should leave the husband. She states that incident took place around 6.00 p.m. on 17.05.2021 when the first wife of her husband with sons and her relatives had gone to the house where the informant and the husband were. It was told to them that they should come as they want to settle the dispute. They were taken in auto at their Tanda near PK. Bar. There she was assaulted severely. Though her husband was telling them that she should not be assaulted; yet, all the relatives had assaulted her severely. Chilly powder was applied on her face and neck. Thereafter it is stated that again after assaulting her, four male members had outraged her modesty by placing their hands on her parts and the ladies had applied marking nut oil almost on her entire body till her private part. She had become unconscious and then she was taken by her husband to Udgir Rural Police Station. In her First Information Report itself she has stated that when earlier the police had come to take her statement in annoyance she had told that rape has been committed on her. However, she changed that in First Information Report by stating that there was no rape committed on her, but it was outraging of her modesty. Therefore, taking into consideration those allegations offence was registered under Section 354, 354-B, 326-A of the Indian Penal Code and

other Sections. No offence is registered under Section 376-D of the Indian Penal Code. However, it appears that later on she has changed her version and re-submitted that she was severely assaulted. When according to her own version there were 4-5 lady members, how she could have been ravished, is a question. Now, the investigation is over and charge sheet is filed. Though the applicants have been shown as not traceable, they have not left the village. If we consider the documentary evidence along with the charge sheet, then, it can be seen that the statement of the husband would show that only the informant was assaulted. The landlord, where the informant and her husband used to stay, is also stating that some dispute had taken place due to the domestic reason. The statements of neighbouring witnesses show that only dispute had taken place, that too, assault and they are not supporting the supplementary statement given by the informant that rape was committed on the informant. The husband, who was allegedly present, is also not supporting the informant. The incident is alleged to have taken place on 17.05.2021, the First Information Report came to be lodged on 27.05.2021 and the supplementary statement has been recorded on 11.06.2021. It shows the concoction. The medical papers also show that the informant had not made complaint about rape, that is, such history was not given. Though medical papers say that she has sustained 7% burn due to marking nut oil; yet, it is to be noted that not even the husband has reported

the incident to police immediately. Further, the hospital had treated it as medico legal case, but there is specific remark on the case paper dated 04.05.2021 that arrangement should be made for recording of statement of the patient, which was previously done, but police did not record the statement. Therefore, taking into consideration all these documentary evidence it raises doubt about the prosecution story and, therefore, the interim protection granted earlier to the applicants deserve to be confirmed.

4 Per contra, the learned APP strongly opposed the applications and submitted that though there appears to be some changes in the statement of the informant; yet, the fact remains is that the informant was admitted to hospital on 18.05.2021. The history that has been given is that she has taken to private hospital, but then the private hospital itself had referred her to the Civil Hospital. The history of physical assault was given and then specific statement about application of marking nut oil was made. It shows that there was 1% of burns to genital area, 3% to lower part of abdomen and 3% burn injuries over face. Total burn injuries were 7% and she was treated as the patient, who has sustained injury due to chemical. Her statement under Section 164 of the Code of Criminal Procedure has been recorded before the learned Magistrate on 15.06.2021, wherein she has given reason as to why she had changed the versions earlier, but then, she confirms

that she was raped. Taking into consideration the seriousness of the offence and the fact that the applicants appeared to have been absconding, they do not deserve any protection.

5 It is to be noted that the First Information Report has been lodged on 27.05.2021 in respect of alleged incident that had taken place on 17.05.2021. The informant says that she got married with Shivaji Pawar about 09 years prior to the First Information Report, with knowledge that Shivaji was already married. At this stage itself, when the charge sheet is produced, we can consider the statement of Shivaji, which has been recorded on 30.05.2021. He does not say that he got married to the informant and only states that since last six months he has love affair with the informant. They both were staying since about 15 days prior to the First Information Report in a rented premises.

6 The contents of the First Information Report have already narrated, therefore, they need not be reproduced once again. In the First Information Report itself it is stated that earlier she had given statement that she was raped but it is surprising to note that the police have not brought that First Information Report or statement, which would be definitely earlier in point of time on record nor that statement was treated as First Information Report under Section 154 of the Code of Criminal Procedure. But then as per

the changed version it was outraging of modesty, though the other allegations appear to be repeated. After some days i.e. on 11.06.2021 when her supplementary statement has been recorded, she again introduces the theory of rape on her. In fact, why there was a necessity for the police to record her supplementary statement, is a question, and thereafter, it appears that Section 376-D of the Indian Penal Code has been added. Thereafter on 15.06.2021 her statement under Section 164 of the Code of Criminal Procedure has been recorded. The medical papers show that she had given history of physical assault only. Now, whether the marking nut oil can be considered as chemical can be revealed only at the time of trial. However, in general it can be said that, that oil is also used for medicinal purposes. Under such circumstance, whether it would attract Section 376-D of the Indian Penal Code, would be the matter of evidence. No doubt, that oil is very strong oil and can cause burns on the human body. In this connection, it can be considered that the statements of neighbouring ladies which have been recorded that they are consistent in saying that the lady accused who are before this Court had broken the marking nuts and applied the oil on the person of informant. Question then arises, as to what informant was doing when those ladies were breaking the marking nut. How there could not have been the resistance, even by the second husband of the informant. All of them are stating that due to the illicit relations of Shivaji with informant

there were disputes. If the medical papers are perused, no other injury appears to have been noted, though from the First Information Report a different picture is created that she was severely beaten by the male members. There is specific mention in the medical papers that the medical officer had not found any evidence of superficial injuries on the genital area. The opinion that has been given is, "*There are signs of physical assault on perineal area, lower abdomen, chest and face, tenderness on right leg around knee. However, sexual assault cannot be ruled out. The final opinion is reserved.*" Therefore, taking into consideration the evidence that has been collected in the charge sheet, the physical custody of the applicants is not required, though as against the male members it is stated that they had committed sexual assault on her, one by one. It is to be noted that the applicants in Anticipatory Bail Application No.1538 of 2021 and other co-accused are the respective wives of the applicants in Anticipatory Bail Application No.1518 of 2021 along with other lady member. The question then arises, when the wife is present, whether she would permit her husband to commit rape on another lady. Definitely, even at this prima facie stage, it can be said that it is the outcome of some concoction and, therefore, as aforesaid, the application deserves to be allowed. At the most, the mail members can be asked to remain present before the Investigating Officer and cooperate to the investigation, which appears to be still undertaken under

Section 173(8) of the Code of Criminal Procedure. With these reasons, following order is passed.

ORDER

1 All applications stand allowed.

2 In the event of arrest of applicants viz. **1) Lahu Shivaji Pawar, 2) Ravikumar Shivaji Pawar and 3) Rahul Lahu Rathod** in Anticipatory Bail Application No.1518 of 2021, in connection with Crime No.198/2021 dated 27.05.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 354, 354-B, 326-A, 324, 323, 509, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860, they be released on P.R. of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one or more sureties in the like amount.

3 The ad-interim protection, granted by this Court earlier to applicants in A.B.A. No.1538 of 2021 and A.B.A. No.1447 of 2021 vide order dated 16.12.2021, is hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of applicants viz. **1) Anjubai w/o Rahul Rathod, 2) Lata w/o Prakash Pawar, 3) Malabai @ Malanbai w/o Sanju Pawar and 4) Champabai w/o Shivaji Pawar** in A.B.A. No.1538 of 2021 and applicant viz. **Ranubai @ Rani w/o Jypal Chavan** in

A.B.A. No.1447 of 2021, in connection with Crime No.198/2021 dated 27.05.2021 registered with Udgir Rural Police Station, Dist. Latur, for the offence punishable under Section 354, 354-B, 326-A, 324, 323, 509, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860, they be released on P.R. of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one or more sureties in the like amount.

4 The applicants shall not indulge in any criminal activity nor shall try to tamper with the evidence of prosecution, in any manner.

5 Applicants shall cooperate with the investigation.

6 Applicants in A.B.A. No.1518 of 2021 shall attend Udgir Rural Police Station, on every Monday and Thursday between 10.00 a.m. to 02.00 p.m., till the supplementary charge sheet is filed or fill statement is made by Investigating Officer before the Trial Court that the investigation under Section 173(8) of the Code of Criminal Procedure is complete.

7 Learned Trial Judge to ensure that the said further investigation should be completed within a reasonable time.

(Smt. Vibha Kankanwadi, J.)