

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

ANTICIPATORY BAIL APPLICATION NO.1550 OF 2021

Sachin S/o Diliprao Deshmukh

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.P.P. More Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
Mr.B.N. Gadegaonkar Advocate for assist to APP.

WITH

**CRIMINAL APPLICATION NO.3189 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.1550 OF 2021**

XYZ

...APPLICANT

VERSUS

1) Sachin S/o Diliprao Deshmukh,

2) The State of Maharashtra

...RESPONDENT

...
Mr.B.N. Gadegaonkar Advocate for Applicant.
Mr.P.P. More Advocate for Respondent No.1.
Mr.V.M. Kagne, A.P.P. for Respondent No.2.

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 9th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 16th FEBRUARY 2022

ORDER :

1. Criminal Application No. 3189 of 2021 has been filed by the original informant lady for assisting prosecution. Taking into consideration the allegations in the case, her identity is not disclosed.

2. Applicant in Anticipatory Bail Application No. 1550 of 2021 is apprehending his arrest in connection with Crime No. 877 of 2021, dated 28-11-2021, registered with Sadar Bazar Police Station, District-Jalna for the offence punishable under Section 354, 354-D, 506 of Indian Penal Code as well as Section 67-A of the Information Technology Act, 2008.

3. Heard learned Advocate Mr. P. P. More for applicant and learned APP Mr. V.M. Kagne for respondent-State well assisted by learned Advocate Mr. B. N. Gadegaonkar for the informant.

4. It has been submitted on behalf of applicant that the alleged act appears to be consensual. In fact, there were talks of marriage between the informant and applicant prior to her marriage with another person. It can be seen that ultimately that marriage could not take place, but earlier they used to talk with each other. The story narrated in the report would indicate that after giving information to the husband also, the informant has not lodged the report immediately. The delay in lodging the FIR has not been explained. Informant was talking to the applicant even after her marriage and when her husband came to know about the same, it appears that she has lodged report with ulterior motive. Offence under Section 354 of Indian Penal Code will not be attracted to the facts of the case, as there is no use of criminal force by the present applicant. Investigation appears to be almost complete and custodial interrogation of the applicant is not required for the purpose of investigation. He has been granted interim bail by this Court and it deserve to be confirmed. Applicant had attended the police station and has handed over his SIM cards and mobile hand set as per the orders of this Court. Now nothing is required to be seized from him. He is ready to abide by the terms of the bail.

5. Per contra the learned APP has strongly opposed the application on the ground that the contents of the First Information Report and statements of the witnesses recorded so far disclose specific role of the applicant. Offence that has been committed by the applicant is heinous. Even though there were talks of marriage between the informant and applicant and they had exchanged their mobile numbers, that does not give right to the applicant to interfere in the marital life of the informant. He had forced the informant to disrobe herself and then he has taken her photographs. He had sent screen shot of his talks with informant to her husband. Even now, the applicant goes in front of informant's house in another District and then threatens her as well as her relatives. Applicant was given understanding but he is not listening. He can not put the life of informant at stake. Though he has produced SIM cards and mobile hand set, yet, possibility that he would have saved the photographs of informant in some other device and would use it in future, can not be ruled out. Offence is serious. He does not deserve discretionary relief under Section 438 of Code of Criminal Procedure.

6. Before considering the submissions, we must consider the contents of the First Information Report. Informant is a married lady. She got married on 19-05-2020. She complains that about a year prior to her marriage, there were talks of marriage between her and applicant. However, her father had not approved the same and therefore, no further talks were held. Applicant had then contacted from his two mobile numbers to her mobile and gave threats that he would kill her father and brother if she refuses to marry him. She had told the said fact to her father, but they had not paid much attention to it. Thereafter, six days after her marriage, when she was at her matrimonial home, she again received phone call from applicant and he gave threats saying that he knows where her husband is working and would tell her husband anything about her. He gave threats to spoil her marital life and also kill her husband. She started talking with him under constraints, but did not disclose it to her husband. Applicant forced her to pick his video calls under threat. He had asked her to remove her cloths and then he had taken screen-shots. Applicant then threatened to sent those photographs to the husband of the informant by giving concocted story. Informant had changed the mobile number. Applicant had disclosed to her husband that now there is no

concern. However, applicant was calling her husband frequently and used to give concocted stories. Informant had seen applicant in front of her house about 2-3 months prior to lodging of First Information Report. He was insisting that informant should leave her husband and should stay with him. When she refused, applicant started giving threats again. Applicant had sent the screen-shots of her nude photographs on the mobile of her husband on 26-11-2021. He gave threats to make those photographs viral in the relatives of the informant. Therefore, informant and her husband had made discussion with her relatives and lodged the report.

7. Perusal of the First Information Report would show that only initial talks of the marriage between informant's family and applicant's family went on prior to the marriage of the informant with another person. Neither informant is saying that there was love affair between her and the applicant, after those initial talks. They might have exchanged the mobile numbers at that time and might have also talked with each other; but applicant can not take it assertively that he can talk to her at any time. Applicant has not come with a case that he was in love with the informant and had real intention to marry. Applicant appears to have come to know that informant has performed marriage with

another person. He ought to have taken it in proper spirit. Whatever might be the reason, their marriage could not take place and therefore applicant should have ended the relationship at that point of time.

8. Learned Advocate for the applicant submits that it appears to be the consensual act of the informant. This Court does not agree to the same. Consent of a lady is not required to be inferred readily. No doubt, we can not go much into details at this stage and an accused has every right to take as many defences as he can, as well as even to keep quiet. That does not mean that lady's consent can be presumed. When she says at this stage that she was constrained to do certain acts, then till evidence is led, we can not drive ourselves to the conclusion, even *prima facie*, that the act was consensual. For taking such defence, accused should state that he used to call the lady and there was some relationship between them, since prior to marriage and continued after marriage.

9. The act of the applicant, as alleged in the First Information Report, in sending those nude photographs to the mobile of husband of the informant, speaks for itself. Panchnama of the screen-shot which was sent by applicant to the informant's

husband has been recorded. Though it can be seen from the said photographs that they were at two different places, yet she says that she had acted as stated by applicant. Another fact to be noted is that, the informant states that now the applicant has gone up to her house and is insisting that she should leave her husband and come to stay with him. Such kind of mentality is dangerous.

10. Perusal of the police papers would show that they have recorded the statements of witnesses, who have stated about the involvement of applicant in the commission of the crime.

11. Applicant was released on interim bail, by this Court on 17th December 2021 and condition to surrender the mobile phones was imposed. He was also asked to submit laptop or any other electronic device before the investigating officer. Applicant has handed over the cell phones. Statement is made that he does not have laptop. This Court had also asked applicant to file affidavit stating which social media he is using. Applicant has given the affidavit, which reveals that he is on Facebook, Instagram, Twitter, LinkedIn, Whatsapp, apart from Gmail. However, this is not sufficient. Possibility of storing the photograph so taken at some secret place (virtual) can not be

ruled out. Further the offence is serious and relates to the dignity of a woman. It needs thorough investigation for which custodial interrogation is necessary. Grant of interim protection to the applicant earlier does not mean that he would also get final relief. On the basis of police papers, we can see the manner in which the offence has been committed. Therefore, case is not made out to exercise extra ordinary powers of this Court under Section 438 of Code of Criminal Procedure in favour of applicant. Hence the following order is passed:-

ORDER

- i) Anticipatory Bail Application No. 1550 of 2021 stands rejected.
- ii) It is clarified that the interim protection granted to the applicant by this Court on 17-12-2021 stands vacated.
- iii) Criminal Application No. 3189 of 2021 for assisting Additional Public Prosecutor stands allowed and disposed off.

[SMT. VIBHA KANKANWADI , J.]