

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2666 OF 2022**

Rachna Torani .. Applicant
Versus
The State of Maharashtra & anr. .. Respondents

**WITH
INTERIM APPLICATION NO. 3238 OF 2022**

Dinesh Jaya Pujary .. Applicant
In the matter between
Rachna Torani .. Applicant
Versus
The State of Maharashtra & anr. .. Respondents

Mr. Rizwan Merchant i/b Swapnil Wagh for the Applicant.

Ms. Anamika Malhotra, A.P.P. for the State/Respondent.

Mr. Sanjay Dhonmar, PI, Colaba Police Station.

Mr. Shehzad Naqvi a/w Ms. Sana Samad and Ms. Shilpa Sharma for the Intervenor in IA No St. 16557 of 2022 in ABA No. 2666 of 2022.

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**CORAM: BHARATI DANGRE, J.
DATED : 28th SEPTEMBER, 2022**

P.C:-

1. On 12/08/2022 the ABA No.2186 of 2022 filed by the applicant was disposed off by recording that the PI, Colaba Police Station shall issue notice under section 41 A of Cr.P.C to her and in

case if he arrived at a conclusion that she has to be arrested he shall give 48 hours prior notice.

Accordingly a notice was issued on 28/08/2022, and the learned counsel for the applicant make a specific submission that the applicant reported to the police station and render all her cooperation.

2. On 26/09/2022, a communication is addressed by the PI, to the applicant wherein it is recorded since the applicant had given incorrect information and did not render cooperation in the investigation and infact he misled the investigating agency, and hence custodial interrogation is very much necessary. Therefore, by the very said communication 48 hours notice is given to her before effecting her arrest.

3. The attention of learned APP is invited to the provision of section 41 A in particularly subsection (3) which contemplate that pursuant to a notice issued under section 41 A, whether a person complies and continues to comply with the same, he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

3. When the learned APP is asked to specify the reasons why the custody is required, she state that the officer apprehend that there

might be some photographs with the applicant, which she make use in future. When asked whether the mobile phone of the applicant is seized, she answer in the positive. Mere apprehension on behalf of the officer can be no ground for custodial interrogation.

4. From the facts which are brought on record, it is also informed by Mr. Merchant that the applicant herself had filed an FIR at Marine Drive Police Station on 25/09/2022, where the complainant is accused of offence of rape. The attention of the Investigating Officer is invited to the Director General Standing Order No. 3 of 2022 pursuant to the directions issued by the Hon'ble Apex Court in case of *Satender Kumar Antil Vs. CBI & anr. AIR 2022 SC 3386* on July 2022.

The Investigating Officer make a statement that he do not have any reason apart from the one which he has indicated in the notice for custodial interrogation.

On being confronted with the legal position, the learned APP make a categorical statement that the Investigating Officer do not desire to have custodial interrogation of the applicant.

Hence the following order

: ORDER :

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R.No. 0270/22 registered with Colaba Police Station, applicant Rachna Torani shall be released on bail on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall report to the concerned police station as and when called for.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)