

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

ANTICIPATORY BAIL APPLICATION NO.359 OF 2023

Ishan s/o. Manojkumar Shah	..Applicant
Vs.	
The State of Maharashtra and ors.	..Respondents

Mr.R.S.Wani, Advocate for applicant
Mr.A.S.Shinde, APP for respondent no.1
Mr.K.N.Shermale, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : MARCH 28, 2023**

PER COURT :-

This is an application for anticipatory bail. The applicant claims to have apprehension of arrest in connection with Crime No.0350 of 2022 registered with Muktainagar Police Station, Dist. Jalgaon, for the offences punishable under Sections 377, 498-A, 504 and 506 read with Section 34 of the Indian Penal Code.

2. Heard learned counsel for the parties. Perused the First Information Report ("FIR", for short).

3. The FIR has been lodged by the wife of the applicant on 21.10.2022. It has been alleged therein that she married the applicant on 08.12.2020. Initially, for some days after the marriage, she was

treated well by the applicant and in-laws. It has been alleged that the applicant subjected her to unnatural sexual intercourse. The applicant is serving in Qatar. He left India for Qatar on 29.01.2021. It has further been alleged in the FIR that the parents-in-law of the informant did not treat her well post the applicant left for Qatar. She, therefore, left her matrimonial home on 12.02.2021 and since then, she is residing at her parental house.

4. Rejection of this application is mainly urged on the ground that the applicant had subjected his wife (informant) to unnatural sexual intercourse. Those alleged acts did take place in the initial days of the marriage, i.e. in first three months of the year 2021. It is true that after the informant left the matrimonial home, she immediately lodged an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, wherein she has alleged to have been subjected to such relationship. It has also been alleged in the FIR that the applicant snapped photographs of such acts and threatened to make them viral.

5. Learned counsel for the informant would submit that the applicant had been unsuccessful in his attempt to seek quashment of the FIR. The judgment and order of the Division Bench of this

Court, turning down the applicant's prayer, has been relied on. According to learned counsel, when the Division Bench refused to grant the applicant relief, it suggests that there is substance in the averments in the FIR. The applicant's custody is required for his medical examination. His cell phone wherein the alleged photographs have been saved, is also required to be seized. Learned counsel also relied the following authorities of this Court to suggest that in those cases, prayer of the applicants therein for anticipatory bail in case of offence under Section 377 of I.P.C., has been turned down:-

- (i) Amir Mehaj Shaikh and anr. Vs. The State of Maharashtra, Bombay High Court order dated 14.07.2022 in Anticipatory Bail Application No.1848 of 2022;
- (ii) Dhananjay Suresh Chandra Sarkar Vs. The State of Maharashtra and anr., Bombay High Court order dated 19.09.2014 in Anticipatory Bail Application No.1213 of 2014;
- (iii) Kalpesh Bhimrao Mahale Vs. The State of Maharashtra, Bombay High Court, Aurangabad Bench order dated 01.02.2022 in Anticipatory Bail Application No.1553 of 2021;
- (iv) Krushna Prakash Khande Vs. The State of Maharashtra and anr., Bombay High Court, Aurangabad Bench order dated 05.08.2022 in Anticipatory Bail Application No.523 of 2022;

(v) Ebrahim Mohd. Iqbal Lakdawala Vs. The State of Maharashtra, Bombay High Court order dated 21.10.2020 in Anticipatory Bail Application (Stamp) No.2224 of 2020

6. Learned APP would submit that the statements of the parents of the informant have been record. They reiterated what has been alleged in the FIR. On the question of medical examination of the informant, he submits that the informant was referred for medical examination. He is, however, not armed with the medical examination report.

7. Considered the submissions advanced and the documents relied on.

8. It is a matrimonial dispute. The applicant is alleged to have had unnatural sexual intercourse with his wife in first three months of 2021. It is true that the informant preferred an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and made allegations in that regard. Section 377 of I.P.C. stood diluted post Apex Court judgment in the case of **Navtej Singh Johar and ors. Vs. Union of India, Through Secretary, Ministry of Law and Justice, (2018)10 SCC 1**. As per the said judgment, consensual relationship between the two adults covering ingredients of offence under Section 377 of I.P.C. is no longer an offence. Whether the

alleged acts committed by the applicant with his wife during subsistence of the marriage were without consent of the wife, can only be decided during trial of the case, since the wife has come out with those allegations only after she realised that her marriage has now been on rocks and there is no possibility of reunion.

9. In the circumstances, custodial interrogation of the applicant is not necessary. The applicant shall do well to appear before the Investigating Officer as and when required and subject him for medical examination. He is also directed to submit the cellphone, which he has been making use of from the date of the marriage. The applicant shall not leave India without permission of the trial Court.

10. With the aforesaid directions, the order dated 14.03.2023, granting the applicant ad-interim anticipatory bail, is hereby made absolute. The applications is allowed.

11. Failure of the applicant to comply with the aforesaid directions, may entail rejection of grant of the anticipatory bail to the applicant.

[R.G. AVACHAT, J.]

kbp