

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 838 OF 2023

Abdul Saleem Saudagar Abdul Mannan
Saudagar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Joydeep Chatterji, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.
Mr. M. K. Bhosale, Advocate for the informant.

WITH
ANTICIPATORY BAIL APPLICATION NO. 848 OF 2023

Abdul Afnan Saudagar Abdul
Saleem Saudagar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Joydeep Chatterji, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.
Mr. M. K. Bhosale, Advocate for the informant.

WITH
ANTICIPATORY BAIL APPLICATION NO. 839 OF 2023

Mohammed Mohsin Abul Saleem Saudagar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Joydeep Chatterji, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.

Mr. M. K. Bhosale, Advocate for the informant.

CORAM : R. M. JOSHI, J.

DATE : 9th JUNE, 2023.

PER COURT :

1. Applicants are in-laws of the informant and they apprehend arrest in connection with Crime No. 310/2023 registered with Nanded Rural Police Station, Dist. Nanded, for the offences punishable under Sections 377, 354(A), 323, 294, 494, 498(A) of the Indian Penal Code and Section 3 of the Maharashtra Prevention of Eradication of Human Sacrifice and Other inhuman Evil and Aghori Practice and Black Magic Act, 2013 (for short "Black Magic Act").

2. Informant lodged report on 2nd May, 2023 stating that she was married to Riyan Saudagar on 24th February, 2021. It is alleged against the husband that he had kept unnatural sexual relations with her. It is alleged against the brother-in-law Afnan that he used to touch her inappropriately thereby her modesty was outraged. It is also stated in the First Information Report that the informant had told about the said acts of her husband to her co-sister-in-law who in response has also stated that she is also suffering in the same manner. When they informed about the same

to their parents-in-law, instead of taking their side they supported their sons. Thereafter father-in-law of the informant had brought locket and black thread and she was called upon to wear the same on her neck and leg. Allegation is also made against father-in-law for touching her inappropriately. On 1st May, 2023, it was revealed to the informant that her husband had performed second marriage and thereafter the present First Information Report came to be lodged.

3. Learned counsel for the applicants state that the husband of the informant against whom offence punishable under Section 377 of the Indian Penal Code has been alleged is not applicant before this Court. It is submitted that the allegations made against the present applicants are vague in nature. It is stated that the alleged offence punishable under Section 354A of the Indian Penal Code against the father-in-law and brother-in-law of the informant are bailable. As regards applicability of Black Magic Act, it is stated that even if it is accepted that the father-in-law of the informant had called upon her to wear the locket and black thread, the same is not covered under the Black Magic Act in order to constitute an offence. It is further submitted that only after knowledge of the alleged second marriage performed by the husband

of the informant, present First Information Report came to be lodged. As regards applicant Mohammed Mohsin is concerned, it is submitted that he has strained relations with his wife and has issued legal notice to her and at no point of time his wife has made any allegation against him for establishing unnatural sexual intercourse with her. It is submitted that considering the nature of allegations against the applicants, custodial interrogation of the applicants is not necessary.

4. Learned APP and learned counsel for the informant opposed said submissions and grant of bail on the ground that in the instant case, informant is not the only victim but wife of Mohd. Mohsin is also one of the victims of offence punishable under Section 377 of the Indian Penal Code. It is submitted that there is specific allegation against Mohammad Mohsin about performing unnatural sexual intercourse with his wife and therefore, it is not a fit case for grant of anticipatory bail to him. All the applications were opposed on the ground that there are number of criminal cases against the applicants and considering the criminal history of the applicants, they may not be released on bail. Per contra, learned counsel for the applicants stated that the applicants are involved in the business of

Gutka and the offences registered against them pertain to the said business and therefore, it is contended that the same cannot become ground for denying bail to the applicants.

5. As far as applicant Abdul Salim Saudagar, father-in-law of the informant is concerned, the allegation against him is that he has touched the informant inappropriately and thereby caused offence punishable under Section 354A of the Indian Penal Code. The said offence is bailable. The only offence against this applicant that remains for consideration is under Black Magic Act. Perusal of First Information Report shows that the applicant had brought a locket and black thread and called upon the informant to wear the same. Perusal of Schedule to Black Magic Act does not show that any such act amounts to offence punishable under Black Magic Act.

6. So far as applicant Abdul Afnan Saudagar, brother-in-law of the informant is concerned, the only allegation against him is that he has commented upon the informant and inappropriately touched her. In this regard, perusal of the First Information Report shows that no particulars are given in respect of such incident. In any case, offence punishable under Section 354A of the Indian Penal Code is

bailable. Other than this allegation, no other allegation has been made against this applicant.

7. Against Mohammad Mohsin, brother-in-law of the informant, no specific allegation has been made by the informant except that after getting knowledge of the second marriage of the husband of informant, when she along with her relatives went to the house of her husband, present applicant and others manhandled and threatened them. So far as submission of learned APP that wife of this applicant is victim of offence punishable under Section 377 of the Indian Penal Code is concerned, though to that extent statement was recorded during investigation, however, material placed on record clearly indicates that there are disputes between the husband and wife. Much prior to filing of the First Information Report, this applicant had issued legal notice to his wife and a proceeding is also filed for restitution of conjugal rights. In the said petition, written statement is filed by his wife wherein no allegations are made by her with regard to she being subjected to unnatural sex. Considering these facts, this Court finds substance in the contention of learned counsel for the applicants that the statement made to the investigating agency by the wife of Mohammad Mohsin could be

afterthought. Apart from this, there is no other evidence on record to corroborate said allegation.

8. As regards criminal history of the applicants is concerned, perusal of record indicates that most of the offences are related to business of Gutka. This Court therefore finds no reason to reject anticipatory bail on this ground. Appropriate directions to the applicants to remain present before the Investigating Officer is sufficient for effective investigation.

9. In view of above, all the applications are allowed. Hence, the following order :-

ORDER

(i) Applications are allowed.

(ii) In the event of arrest of applicants in connection with Crime No. 310/2023 registered with Nanded Rural Police Station, Dist. Nanded, for the offences punishable under Sections 377, 354(A), 323, 294, 494, 498(A) of the Indian Penal Code and Section 3 of the Maharashtra Prevention of Eradication of Human

Sacrifice and Other inhuman Evil and Aghori Prctice and Black Magic Act, 2013, they be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) each with one solvent surety each in the like amount.

(iii) They shall attend the concerned police station once in a week, till filing of charge-sheet.

(iv) They shall not contact the witnesses directly or indirectly.

(v) They shall not interfere with the evidence in any manner whatsoever.

(vi) They are further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1966 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO. 848 OF 2023

Ayesha Ajman Riyan Saudagar Applicant

Versus

The State of Maharashtra & another Respondents

Mr. M. K. Bhosale, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.
Mr. Joydeep Chatterji, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 1965 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO. 839 OF 2023

Ayesha Ajman Riyan Saudagar Applicant

Versus

The State of Maharashtra & another Respondents

Mr. M. K. Bhosale, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.
Mr. Joydeep Chatterji, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 1964 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO. 838 OF 2023

Mohammed Mohsin Abul Saleem Saudagar Applicant

Versus

The State of Maharashtra & another Respondents

Mr. M. K. Bhosale, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.
Mr. Joydeep Chatterji, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
DATE : 9th JUNE, 2023.

PER COURT :

Applications are allowed.

(R. M. JOSHI)
Judge

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