

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

**ANTICIPATORY BAIL APPLICATION NO.809 OF 2023
WITH ABA/950/2023**

**PALLAVI W/O ASHOK BANDGAR
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant in ABA/809/2023: Mr. V. S. Kadam
Advocate for Applicant in ABA/950/2023: Mr. P. S. Dighe
APP for Respondents: Mr. V. S. Badakh

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2023

PER COURT :

1. Applicants are husband and wife and they are apprehending arrest in connection with Crime No. 88/2023 registered with Begumpura Police Station, Dist. Aurangabad for the offences punishable under Sections 376(2)(n), 109, 114, 504 & 506 of the Indian Penal Code.

2. On 25.04.2023 informant lodged report with the police stating that in November, 2021 she met Applicant – Ashok Bandgar in ABA/950/2023. She further claims that he encouraged her for staying in his house as paying guest, since during the relevant time on account of Covid pandemic hostels were not open. It is

contended by the informant that since June, 2022 this Applicant - Ashok has tried to make physical advances towards her. The informant opposed this, however, she further claims that she still continued to stay with them due to the fear that he will lodge complaint against her for commission of theft. It is alleged that in July, 2022 Applicant forcibly established physical relation with her continued such acts time and again. This came to the knowledge of the wife, i.e., applicant in ABA/809/2023, however, she encouraged the informant to go to her husband, as she wanted a son from this relationship. On these amongst other allegations report came to be lodged against present Applicants.

3. Learned Counsel for the Applicants states that there is inordinate delay in lodging of FIR, as incidents have allegedly occurred from July, 2022 and report came to be lodged in April, 2023. Learned Counsel for the Applicants further states that as it appears from the FIR, certain business transactions were looked after by the informant on behalf of Applicant and in that regard when she was questioned, present false report came to be lodged.

4. Learned APP opposed the said submissions by referring to the statement of informant in FIR wherein it is specifically stated that the Applicant had asked her to stay with them as a paying guest and thereafter forcibly established physical relationship with her. It is stated that there are specific allegations made against both Applicants and considering seriousness of crime, it is not case for grant of pre-arrest bail.

5. Admittedly the report is lodged on 25.04.2023 alleging the incident of June, 2022. It does not stand to any reason as to why there was no immediate complaint made by the informant in respect of forceful relation established with her by Applicant – Ashok. In order to appreciate the allegations and to find out involvement of the Applicants in crime, it would be relevant to consider the previous conversation between the parties, as at the time of lodging of report the true facts may not surface. With assistance of learned APP, this Court has seen whats app chat between informant and wife of the Applicant which clearly indicates that this is not the case of any force or compulsion in establishing relationship. If it was so

it would have reflected from this conversation. In this backdrop, contention of Applicants that for mismanaging business transactions and to avoid that responsibility, possibility of lodging of present FIR cannot be completely ruled out. Informant is major and from material on record there is reason to believe that this could be a consensual physical relationship between two adult persons. Essential ingredients of Section 375 of IPC may not get attracted to this case. In such circumstances, liberty of the Applicants deserves to be protected.

6. Hence, the order:

O R D E R

- (i) Anticipatory Bail Application No.809 of 2023 is allowed in terms of interim order dated 18th May, 2023.
- (ii) In the event of arrest the Applicant - Ashok in connection with Crime No. 88/2023 registered with Begumpura Police Station, Dist. Aurangabad for the offences punishable under Sections 376(2)(n), 109, 114, 504 & 506 of the Indian Penal Code, he shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one solvent surety in the like amount.

- (iii) He shall attend the concerned police station on every Monday between 10.00 a.m. to 12.00 p.m.
- (iv) He shall not contact the prosecution witness directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)

Malani