

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

ANTICIPATORY BAIL APPLICATION NO.1187 OF 2023  
WITH ABA/1073/2023

DEVANAND HEMANT CHAVAN  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.S. S. Panale, Advocate for the applicants  
Mr. G. O. Wattamwar, APP for the respondent/State  
Mr. A. N. Panale, Advocate for respondent No.2.

**CORAM : R. M. JOSHI, J.**

**DATE : 8<sup>th</sup> NOVEMBER , 2023**

**P.C. :-**

1. Applicants apprehend arrest in connection with Crime No. 51/2023 registered with Sindkhed Police Station, Tal. Mahur, Dist. Nanded for the offences punishable under Sections 376(2)(n), 354-A, 377, 498-A, 313, 323, 324, 504, 506 r/w 34 of IPC.

2. The allegations made in the first information report can be summarized as under:

. Complainant who is 26 years old lady filed complaint under Section 156(3) before JMFC, Kinwat wherein she alleged that her marriage was solemnized with accused No.1 on 04/05/2021 as per Hindu rites and rituals. It is alleged in the first information report that for their marriage total sum of Rs.30 lakhs was spent. Immediately after some days accused persons demanded Rs.2 lakhs. The father of the complainant paid the said amount in cash.

Immediately after few days again they demanded Rs.5 lakhs for installing filter water plant as the father of the complainant was not in a position to pay the said amount they started torturing complainant mentally and physically. Accused No.1 against the will of the complainant has established unnatural sexual activities with her. Thereafter, complainant came to know that she is carrying pregnancy of one and half month. On 11/05/2022 when she went to Assesi Seva Sadan Hospital, Nagepalli for sonography she came to know she is having pregnancy of 11 to 13 weeks. When complainant told about pregnancy to her in-laws they suspected her character and asked her to carry out abortion. All of them assaulted on her stomach with fist and kick blows for doing abortion. Thereafter her husband without consent /will of complainant gave pills to her in food and done abortion at her matrimonial home itself. She also claims that when her husband was not in a house, her brother-in-law forcibly established physical relations with her. When she disclosed about this incident to her husband and in-law, they supported her brother-in-law and told her to keep mum. They also threatened her to kill her if she discloses this incident to anyone else. Finally it is alleged that, on 13/11/2022 when she is at her parental home alone her brother-in-law took disadvantage and forcibly established physically relations with her. When complainant disclosed this fact to her

mother they decided to take legal action against them. In spite of repeatedly approaching to police personnel, police failed to take action against accused persons. Hence complaint was made to Magistrate and in view of order passed under provision of Section 156(3) of Cr.P.C. FIR came to be lodged.

3. Learned counsel for the applicants submits that since there are dispute between husband and wife, husband as well as brother-in-law is sought to be involved in false case. It is submitted that the first information report is as vague as possible with regard to the allegations made by the informant in respect of the conjugal physical relations between husband and wife. It is submitted that though allegations are made that abortion was caused due to the harassment and assault caused by the applicant and other in-laws, the said allegations are not plausible in view of the evidence collected during the course of investigation. It is submitted that the allegations is made against brother-in-law that he committed rape on her is also not acceptable on the face of it. It is submitted that if the brother-in-law had even earlier subjected her with forcible physical relation, it does not stand to any reason as to why the informant was left alone as claimed by him her, by her own parents in their house. Apart from this it is submitted that there is delay in lodging of the FIR. Since, charge-sheet is filed applicants is claimed pre-arrest bail.

4. Learned counsel for the informant opposed the application by contending that since the concerned police station failed to register the report sought to be lodged by the informant, she was required to file an application under Section 156(3) of Cr.P.C. before the concerned Magistrate and only after the order passed therein the report came to be registered. It is submitted that no woman can make such allegations against husband and brother-in-law unless she is subjected to such treatment by them. He submits that there is a specific allegation in the first information report that after four months of the marriage harassment was started to the informant and that the miscarriage was also caused by the applicants and other in-laws. It is submitted that the offence alleged against the applicants is serious in nature and having regard to the facts and circumstances of the case it is not a fit case to grant pre-arrest bail.

5. Learned APP also opposed the application by placing reliance on the statement of the informant and her parents. Attention of the Court is drawn to the medical papers wherein Medical Officer has opined that the possibility of oral and anal sex is not rule out. It is thus submitted that there is material evidence on record to show complicity of the applicants in this crime.

6. Since grievance was made on behalf of the informant that the concerned Police Station failed to record the report sought to be lodged

by the informant, report was called from SP. The SDPO, Mahur submitted report indicating that CCTV footage of the relevant period of the police station is not available however, it is further stated therein that after the receipt of a complaint by SP, the concerned police had given intimation to the informant to come to the police station for recording statement however, she did not go to the police station. The said report indicates that there is reason to accept the contention of the learned counsel for the applicants that there is delay in lodging of the first information report.

7. Perusal of the first information report shows that there are allegations in respect of the harassment caused by the applicants and other in-laws however, even approximately no details are provided therein. As far as the allegations against the husband of performing unnatural sex with the informant is concerned, learned counsel for the applicants submits that since offence under Sections 376 of IPC does not get attracted against the applicants now there is a tendency of alleging offence under Section 377 of IPC against the husband, in the facts of the case this Court finds substance in this submissions. After the alleged miscarriage, informant came to her parental home. She however does not claim to have made any disclosure to her parents about the behaviour of her husband or brother-in-law. It is pertinent to note that the conjugal relationship between husband and wife is so personal in nature that it is not possible to ascertain the correctness of the

allegations made therein. Hence, it would be relevant to see as to whether there is any medical evidence in order to show the possibility of the informant being subjected to unnatural sexual assault. Perusal of the medical papers do not indicate any such clinical evidence, however, Medical Officer opined that such possibility is not ruled out coupled with the possibility of even oral sex. In absence of any clinical evidence the opinion expressed by the Medical Officer is on the face of it not acceptable.

8. As far as allegations against the brother in-law of he committed rape on the informant is concerned, the allegation in the first information report shows that even on previous occasion in absence of the husband of informant, the brother-in-law is said to have committed sexual assault on her. The statement of mother of the informant indicates that the incidents occurred at the matrimonial home were disclosed by the informant to them. If it is so it does not stand to any reason or justification as to how the parents of the informant would leave her alone in their own house with the brother-in-law. This Court finds substance in the contention of the learned counsel for the applicants that the allegations could be only with a view to rope as many in-laws of the informant as possible.

9. As far as the allegation of miscarriage is concerned, there is no disputes about the fact that when it was revealed to the informant that

she is pregnant, she has also being taken to the Doctor at her parental place. There is nothing on record to indicate that it was a case of forced abortion/miscarriage.

10. Considering the facts of the case prima face this Court of the view that since there are disputes between the husband and wife, the possibility of false implication by making such allegations is not ruled out. Admittedly, charge-sheet is filed with entire evidence being collected during the investigation, no custodial interrogation of the applicants is necessary. Hence, applications deserve to be allowed. There are no criminal antecedents. They are not likely to flee from justice.

11. It is clarified that these observations are prima facie consideration of the material on record and for the purpose of deciding these applications and the same shall not bind to the Trial Court.

12. In view of above applications are allowed in terms of interim order dated 21<sup>st</sup> July, 2023.

**(R. M. JOSHI, J.)**

ssp