

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

74 ANTICIPATORY BAIL APPLICATION NO.1178 OF 2023

ABDUL RIYAN SAUDAGAR ABDUL SALEEM SAUDAGAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent – State : Mr. G.O. Wattamwar
...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 7, 2023

PER COURT :

. Perusal of the First Information Report shows that the informant who is first wife of the applicant has made allegations that after her marriage with him on 24.02.2021, he is subjecting her with unnatural sex. There are other allegations made against the husband and in-laws. It is specifically stated that she was driven out of the matrimonial home and for last one year she is staying at parental home. It is further contention that on 01.05.2023 at around 07:00 p.m. she came to know about the performance of second marriage by the applicant and hence she along with paternal relatives went to the house of the applicant wherein they were abused and assaulted.

2. Learned counsel for the applicant states that there is inordinate delay in filing of FIR. He drew attention of the Court to the notice issued by the applicant to the informant dated 26.10.2022 as well as the petition filed by him for Restitution of Conjugal Rights. He also states that the proceeding is also initiated for seeking custody of the minor child from the informant. According to him, apparently this is a false case as the informant is aggrieved by the alleged second marriage of applicant.

3. Learned APP opposed the application by contending that there are specific allegations against the applicant which attract offence under Section 377 of the Indian Penal Code. It is submitted that any woman would be hesitant to make such allegations and that informant tried to protect her marriage and therefore no report was lodged immediately. It is also contended that for the purpose of effective investigation seizure of the mobile phone of the applicant is necessary and hence for this purpose his custodial interrogation is required.

4. Informant claims that the applicant who is her husband is

subjecting her with unnatural sexual relationship since the year 2021. There is nothing on record to show that at any point of time prior to lodging of the report any such grievance is made. Learned APP might have been justified in submitting that in order to protect her marriage no immediate complaint was lodged. However, there is absolutely nothing on record in the investigation papers to show that she made any attempt for reconciliation with the applicant. Apart from this, the informant has refused her consent for her medical examination. This shows that there is reason to believe that this could be a false complaint. As far as the recovery of the mobile is concerned, appropriate direction can be issued to the applicant to attend concerned police station.

5. In view of the above, following order is passed.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicant in connection with Crime No.310 of 2023 registered with Nanded Rural Police Station, Dist. Nanded for the offence 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, he be released on bail on furnishing PR Bond of Rs.15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount.

- (iii) He is further directed to attend concerned police station once in fortnight. For the purpose of recovery i.e. mobile phone, he shall be deemed to be in custody.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate with the investigating agency for further investigation.

[R. M. JOSHI]
JUDGE

GGP