

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

946 ANTICIPATORY BAIL APPLICATION NO.931 OF 2023

BABASAHEB SHANKAR RAUT

VERSUS

THE SUPERINTENDENT OF POLICE, AHMEDNAGAR AND ANOTHER

...

WITH

CRIMINAL APPLICATION NO. 2620 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO. 931 OF 2023

...

Advocate for Applicant : Mr. Rahul R. Karpe

APP for Respondent / State : Mr. V. S. Badakh

Advocate for Assist to PP : Mr. S.R. Andhale

...

AND

ANTICIPATORY BAIL APPLICATION NO.932 OF 2023

SHUBHAM BABASAHEB RAUT

VERSUS

THE SUPERINTENDENT OF POLICE, AHMEDNAGAR AND ANOTHER

...

WITH

CRIMINAL APPLICATION NO. 2621 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO. 932 OF 2023

...

Advocate for Applicant : Mr. Rahul R. Karpe

APP for Respondents: Mr. V. S. Badakh

Advocate for Assist to PP : Mr. S.R. Andhale

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CORAM : R. M. JOSHI, J.

DATE : SEPTEMBER 07, 2023

PER COURT :

1. Considering the allegations made in the FIR, the applications seeking permission to assist the Public Prosecutor are

allowed and disposed of.

2. Apprehending arrest in connection with Crime No.394 of 2023 registered with Kotwali Police Station, Dist. Ahmednagar for the offences punishable under Sections 376(2)(n), 417 of the Indian Penal Code and Section 4 of Dowry Prohibition Act, the applicants have approached this Court seeking anticipatory bail.

3. The informant claims that her marriage was fixed with applicant in Anticipatory Bail Application No.932 of 2023 and that the engagement ceremony took place on 28.02.2023. It was decided therein that the marriage would be performed on 15.05.2023. The informant states in the report that the applicant – Shubham had asked for sexual relationship with her by stating that since their marriage is fixed, there is nothing wrong to maintain such relationship. She claims that they had physical relations at her house. Similar statement is there in respect of sexual activities being maintained after 09.03.2023. On 10.04.2023 the brother of the informant had informed to the father of the applicant - Shubham about marriage hall being booked for the purpose of marriage, at that time he (Babasaheb / applicant in ABA No.931 of 2023) insisted for the marriage to be

performed in the evening. The brother of the informant opposed it by stating that the marriage would be performed only in the afternoon. Upon this it is alleged that applicant's father had asked for a sum of Rs. Seven Lakh, if the marriage was to be performed in the afternoon and also asked for the court marriage. It is claimed that the brother of the informant has refused for the court marriage and also denied payment of Rs. Seven Lakh. On these allegations, the FIR came to be lodged.

4. Learned counsel for the applicants submit that so far as the allegation of physical relationship is concerned same is made against applicant – Shubham. He further submits that there is no allegation in the FIR that against the will of the informant any physical relationship is established by him. It is his submission that the essential ingredients in order to constitute offence of rape as contemplated under Section 375 IPC are not satisfied in the present case. It is submitted that the learned Additional Sessions Judge has also recorded the finding that the relationship between the informant and applicant – Shubham, who are adults, is consensual in nature. According to him, the application for anticipatory bail is rejected

solely on the ground that there was exchange of WhatsApp messages between the applicant - Shubham and the brother of the informant. It is submitted by filing affidavit that no such messages are exchanged between them and that it is false implication. So far as the allegation of demand of dowry by applicant – Babasaheb is concerned, he has not made any such demand from informant or her brother.

5. Learned counsel for the informant states that the consent of the girl cannot be considered as unequivocal in this case. According to him, after the engagement ceremony since the relationship was maintained by the applicant – Shubham with the informant, this has to be considered as misconception of the fact and not unequivocal consent of the girl. With regard to the messages exchanged between the brother of the informant and applicant – Shubham, it is submitted that there is statement recorded of the brother of the informant which shows that such messages were exchanged and that there was demand of dowry. So far as applicant – Babasaheb is concerned, he has also made demand of dowry from the brother of the informant.

6. Learned APP opposed the application with the submission

that the statement of the informant coupled with the statement of her brother are sufficient to indicate that it is the case of offence punishable under Section 376 the IPC as well as offence of the demand of dowry and applicants taking disadvantage of situation.

7. At the outset, it needs to be recorded that the findings of the learned Additional Sessions Judge that it is the case of consensual relationship has not been taken exception by the informant or prosecution. Even from perusal of the FIR it does not appear that the said relationship is established by applicant – Shubham against her will. As far as the allegation of the demand of dowry is concerned, there is nothing mentioned in the FIR that any messages were exchanged in this regard though those messages relate to time prior to lodging of FIR. It is pertinent to note that for the first time during the pendency of the application before the Additional Sessions Judge for the anticipatory bail messages were brought on record indicating that there was a conversation between the brother of the informant and applicant- Shubham. Learned Additional Sessions Judge accepting the said messages to be genuine, proceeded to hold that the applicant is trying to take disadvantage of the situation. In this

regard when the direction was issued by this Court to Investigating Officer to verify this fact, the brother of the informant and applicant were called upon to surrender their mobile phones. Though applicant / accused surrendered his phone forthwith, brother of informant was found reluctant to do so. The said phone was not handed over to the Investigating Officer on the pretext that the said phone is with informant who had gone to Vaishnodevi. Learned counsel for the informant was made a query as to the period for which the informant had been to the Vaishnodevi, he, on instructions, states that she was there at Vaishnodevi for the period from 19.07.2023 to 27.07.2023. This Court also made a specific query to learned counsel for the informant to confirm the fact as to what are his instructions as to from whose mobile phone the said messages were exchanged, he has made a candid statement that messages were sent and received on the mobile phone of the brother of the informant. If it is so, then it does not stand to any reason or any explanation as to how the mobile phone of the brother of the informant would be taken by the informant herself with her. This becomes more suspicious and doubtful when brother of the informant while giving the mobile phone to the Investigating Officer states that he has formatted the

mobile phone on 18.07.2023.

8. It is the contention of the learned counsel for the informant and learned APP that since the conversation / messages were exchanged between the brother of the informant and applicant - Shubham, hence there is no mention about the same in the FIR. Such contention is not plausible for the reason that it is practically impossible that the informant would not know anything from her brother about such messages being exchanged between them.

9. Pertinently, non-mentioning of exchange of those messages in the FIR coupled with the fact that the mobile phone from which the said messages were allegedly exchanged is formatted just before its surrender to the Investigating Officer speaks volumes about the veracity of allegations. There is reason to believe that these allegations are made only with a view to oppose the grant of anticipatory bail before the learned Additional Sessions Judge, which ultimately became only ground for its rejection. Excluding these allegations, there is no reason recorded by the learned Additional Sessions Judge for not granting anticipatory bail.

10. Perusal of the FIR on the face of it does not disclose any offence punishable under Section 376 (2)(n) of the IPC. As far as applicant - Babasaheb in Anticipatory Bail Application No. 931 of 2023 is concerned, who is father of applicant - Shubham, there is no question of attributing any offence under Section 376 of the IPC.

11. Learned APP and learned counsel for the informant submit that the mobile phones of the applicant - Shubham as well as brother of the informant are sent for examination to the FSL. According to them till the report is received, no anticipatory bail can be granted. This Court does not find force in this submission for the reason that the conduct of the brother of the informant on the face of it does not appear genuine and possibility of creation of record is not ruled out. In such circumstances, wait for the FSL report in respect of these mobile phones could not become ground to deny liberty of applicants. In any case mobile phones are already seized and there is no question of any recovery to be done at instance of applicants.

12. Having regard to these facts, this is a fit case for grant of

anticipatory bail. Hence, following order:

ORDER

(i) Both the applications are allowed in terms of interim orders passed therein on 22.06.2023.

[R. M. JOSHI]
JUDGE

GGP