

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1531 OF 2023

Irfan Shah Harun Shah ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. A. R. Borulkar, Advocate for the Applicant.

Mrs. G. L. Deshpande, APP, for the Respondent – State.

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 16, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 249 of 2023 registered with Sillod Rural Police Station, Dist. Aurangabad for the offences punishable under Section 376 of the Indian Penal Code.

2. According to her, on 08.08.2023 she received phone call from her acquaintance i.e., present Applicant who had agreed to show plots at Sillod. She went from Aurangabad to Sillod. At around 04.00 pm she reached there. It is alleged that Applicant took her to hotel Aryan at about 05.00 pm and told her that persons who are going to show plots are coming shortly.

Thereafter, he closed the door of the hotel room and committed rape on her.

3. Learned Counsel for the Applicant submits that there is delay of five hours in lodging of the report. He further submits that there is suppression of the fact by the informant while lodging report has given different name and which shows ill-motive of informant. It is also argued that against informant and her husband complaint was lodged by the present Applicant in the year 2017 and trial of the said proceeding is going on. According to him, since the trial is at the stage of recording of evidence, Applicant is being falsely implicated in the crime. It is sought to be argued that there is normal relationship between Applicant and informant and to support the same, whats app messages are relied upon.

4. Learned APP opposed the application by referring to the statement of informant as well as other witnesses. She also drew attention of the Court to the history given by the informant to medical officer and opinion of the medical officer that sexual assault on the informant cannot be ruled out.

5. The incident has occurred at around 05.00 pm on 08.08.2023 and the report is lodged at 11.00 pm. There is no reason to accept the contention of the Counsel for the Applicant that there is delay in lodging of the FIR. Pertinently, informant hails from Aurangabad and she had been to Sillod wherein she was subjected to sexual assault. From the FIR it revealed that she was required to contact her uncle and thereafter report could be lodged. Thus, in the circumstances it cannot be said that there is any delay in lodging of the FIR.

6. At this stage, there is absolutely nothing on record to indicate that there was any sort of relationship between the Applicant and the informant and that this could be a case of false implication. The reliance placed on the whats app messages is not supporting the contention of the Applicant as said messages do not indicate any relationship between them. These messages are formal in nature and owing to the fact that Applicant was showing plots to the informant, exchange of such messages is normal. Informant was medically examined and history and opinion given is

consistent with the FIR. The medical officer also supports her case of she being ravished by Applicant. At this stage, this Court finds no reason to discard the allegations made in the FIR as offence is serious in nature.

7. *Prima facie* involvement of Applicant is seen in a serious offence which is punishable for imprisonment of not less than 10 years and which may extend to life. In such circumstances, Applicant has failed to make out any case for pre-arrest bail. Hence, Application stands dismissed.

(R.M. JOSHI, J.)

Malani