

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

BAIL APPLICATION NO.1719 OF 2023

**KIRAN SHIVAJI KATE
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. Joydeep Chaterji, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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**WITH
CRIMINAL APPLICATION NO.3776 OF 2023**

**KISHOR NARAYAN DAWALE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

...

Mr. N. B. Narwade, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.
Mr. Joydeep Chaterji, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th OCTOBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.24/2023 dated 23.01.2023 registered with Police, Station Sonai, District Ahmednagar, for the offences punishable under Sections 393, 307, 452, 506 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by Smt. Anita Kishor Dawale. She alleges that on 22.01.2023 she was sleeping in a room of their house alongwith her husband and son. At about 11.30 pm her husband raised shouts. Her husband narrated that while he was asleep, unknown person was looking towards his locket and trying to entangle some iron instrument on his hand, however, when he

raised shouts said persons ran out of room. It is further stated that the police arrived after telephonic call. It was found that the cash and gold ornaments were at the place. However, the unknown person had handcuffed the husband of the informant and attempted to snatch the locket. On the basis of such information, Crime No.24/2023 came to be registered against the unknown person. It appears that, during the course of investigation the informant recorded her supplementary statement dated 24.01.2023, wherein she disclosed that since last 4-5 years her husband is suffering from mental disorder. Initially, he was treated at Shrirampur with Dr. Unde. He responded to medical treatment. Thereafter, from 20.12.2022 again he is suffering from mental disorder and he is under supervision of Dr. Joshi, a Psychiatrist at Shirdi. She further explained that on 22.01.2023, when her husband shouted, his left hand was handcuffed. The key of the handcuff was found in a kitchen. The handcuff was having embossed number as 11183 with letters "Maharashtra Police".

3. It appears that, the statement of the informant dated 06.02.2023 has been recorded under Section 164 of the Criminal Procedure Code, wherein she discloses that she found handcuff in the campus of Tahsil office and since her husband was suffering from mental disorder, she was using it to handcuff him.

4. Again supplementary statement of the informant have been recorded on 17.02.2023, wherein she discloses that on 22.01.2023 she had handcuffed her husband. He was sleeping after administration of regular medicines. However, when the influence drug was reduced, he shouted, alarming other family members, who rushed to the room and found her husband in handcuffed condition. Since, she had apprehension of being

questioned, she gave fictitious narration in her report regarding entering of the unknown person in the house with intention to snatch chain. She clarifies that on 22.01.2023, none had entered in her house.

5. It appears that, the again informants supplementary statement dated 19.05.2023 is recorded, wherein she discloses that she has acquaintance with Kiran Shivaji Kate (present applicant) since before her marriage. She received his friend request on her facebook account, which was accepted by her. Since then, they were in contact with each other. In July-2021 he visited her home at Aakhegaon alongwith Datta Marathe and Amol Borude. She states that on 22.01.2023, the applicant Kiran Kate had been to her house and attempted to handcuff her husband. When her husband shouted, he squeezed his face by pillow. However, hearing the shout of her husband, the other family members rushed to the room. The applicant Kiran Kate left the home and apprehended her of dire consequences, if she disclosed the incident to any one. Therefore, she had given fictitious story regarding incident in her report. Similar version has been repeated in her supplementary statement dated 19.05.2023. The on 09.06.2023 statement of the Kishor Dawale i.e. husband of the informant has been recorded under Section 161 of the Criminal Procedure Code, wherein he discloses that on 22.01.2023 the applicant had entered in his room at about 11.30 pm, he squeezed his mouth by the pillow and then handcuffed him. When he shouted, his family members rushed to the room. By that time the accused/applicant flee away. He further states that because of such incident he suffered trauma. He was taken to Apex Hospital at Ahmednagar. In that process his wife gave statement to the police underof threats of the applicant.

6. It appears that, in pursuance of the aforesaid statement of the first informant and her husband, the offences punishable under Sections 307, 452 and 506 have been added against applicant. Earlier applicant had approached the Sessions Court for grant of Anticipatory Bail, however, his prayer was rejected. Thereafter, he surrendered on 12.08.2023. He was granted police custody till 16.08.2023. Since then, he is in Magisterial Custody Remand. The applicant approached the Sessions Court at Newasa for grant of Regular Bail, however, his prayer came to be rejected vide order dated 18.09.2023. Hence, the present application.

7. The learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid crime. Initially, FIR was lodged on 23.01.2023 against unknown culprit. He came to know about the allegations made against him and his implication as an accused in present crime. Thereafter, the applicant had approached sessions court and this court for grant of pre-arrest bail, which was rejected. The applicant surrendered before police on his volition. He co-operated with the investigation. The investigation is practically over. Further detention of the applicant is not required. He would submit that first informant has time and again changed the version because of pressure exerted by her family members. The inquiry as regards to the handcuff referred in the FIR is already completed, wherein it is found that the applicant is unconcerned with handcuff found with informant. He would, therefore, urge that the applicant be released on bail.

8. The learned APP strongly opposes the prayer. He would submit that the applicant is a police officer. The release of

the applicant is likely to hamper the investigation, which is still in progress. The alleged offenses are serious, more particularly, looking to the fact that the applicant is a police officer, possibility of tampering of the evidence cannot be ruled out.

9. Mr. Narwade, learned Advocate appearing for the informant vehemently opposes the prayer. He would submit that the husband of the informant made several representations to the Superintendent of Police, Ahmednagar from 17.04.2023 onwards and requested to take action against the applicant, who maintains extra marital relations with the informant and attempted to kill him in the night of 23.01.2023. He would further invite attention of this Court to the observations of this Court in Anticipatory Bail Application No.1212/2023, which reads as under:

“There is prima facie material placed on record by the victim to show that at least on 10.04.2023 he had been to Superintendent of Police, Ahmednagar. This Court finds substance in his contention that only because the applicant is police personnel, no proper investigation has been done. Hence, Superintendent of Police, Ahmednagar to depute another Investigating Officer to investigate into this crime.”

Mr Narwade relying on aforesaid observations urges to reject plea of bail.

10. Having considered submissions advanced, apparently, in the reported dated 23.01.2023, a twisted story with intention to tender explanation regarding handcuffing of the husband of the informant appears to have been given. The fact remains that the husband of the informant was handcuffed and because of his shouts the family members had rushed in the room of the informant.

11. The investigation papers further disclose that the husband of the informant is a patient of bipolar disorder since 2017. Since then, he is under medical supervision. From December 2022, lastly he was under medical supervision of Dr. Onkar Joshi, Psychiatrist at Shirdi. Dr Joshi in his report noted the symptoms of mania like excessive talk, irritability, lack of sleep and increased goal directed activity. Further the patient has been continued under medication. It is clarified that since 09.02.2023 the patient has not attended the clinic. No opinion can be given regarding his present status.

12. The informant recorded her supplementary statement dated 17.02.2023, wherein she sought to explain that the handcuff was found to her in Tahsil campus and she was using the same to handcuff her husband, since he used to raise shout and run away in the night times. The statement of few other witnesses, who had actually rushed to the room of the informant on the day of alleged incident, particularly the statement of the Dnyandeo Dawale shows that when he reached at the room he found that the husband of the informant was handcuffed. The key of the handcuff was found on kitchen top and using the same, the handcuff was opened. Thereafter, the police were called. It is, therefore, possible that informant had handcuffed her husband as security measures because of his illness. The allegation regarding illicit relations with the applicant appears to have emerged thereafter. Whether the applicant had really entered in the house of informant on the day of incident and whether he had made an attempt to kill the her husband would be the matter of trial. The applicant surrendered with the police after rejection of his plea for grant of anticipatory bail. Since last two months, he is behind the bar. The investigation in the matter is practically over. Although, the allegation is made on behalf of the informant that the

investigating machinery is not fair with them, that needs to be addressed in appropriate proceeding. However, in absence of the clinching evidence to indicate that the applicant had been to the house of the informant on the day of the incident, it would be difficult to draw any inference. The possibility of raising false allegations regarding illicit relationship of the applicant with the informant cannot be ruled out, particularly looking to the medical disorder suffered by her husband. So far as the presence of the handcuff with the informant, it is a matter of independent enquiry. Taking overall survey of the material available on record, further detention of the applicant would not be necessary. Hence, case is made out for grant of bail. Hence, following order:-

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Kiran Shivaji Kate be released on bail in Crime No.24/2023 registered with Sonai Police Station, District Ahmednagar dated 23.01.2023, for the offences punishable under Sections 393, 307, 452, 506 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall not establish contact with any person acquainted with the facts of the present case or likely to be witnessed on behalf of the prosecution.
 - c. The applicant shall co-operate with the investigation and visit the concerned police station once in a week i.e. on every Sunday between 10.00 am to 02.00 pm.
- (iii) Application is disposed of.

(iv) In view of disposal of Bail Application, the Criminal Application No.3776/2023 is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2023