

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1159 OF 2023

Swapnil Subhash Mane ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Sanjiv Kadam a/w. Mr. Dilip Shinde, Mr. Mohan Kumbhar, Mr. Pratik Deshmukh and Mr. Naresh Karande, for the Applicant.
Mr. Aadesh Konde-Deshmukh a/w. Rohin Chauhan, for the Respondent No. 2.
Mr. M.G. Patil, APP for the State.
Mr. S.T. Bhandare, PN, Islampur police station, Sangli present.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 11, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No.228 of 2023 registered at Islampur police station for the offences punishable under sections 376, 354A(a)(i), 323, 504 and 506 read with 34 of Indian penal Code, 1860.
3. The first informant lodged report with the allegations that her betrothal ceremony with the applicant was solemnized on 26th December, 2022. The marriage was scheduled to be solemnized on 31st January, 2023. The first informant alleged that in the intervening period, whenever she met the applicant, he tried to

inappropriately touch her. She resisted the sexual advances of the applicant. On 16th January, 2023 while traveling from Kolhapur to Karad, the applicant attempted to outrage her modesty. On the same day, when they returned home, there was nobody at her house. The applicant allegedly forced himself upon her and sexually exploited her. She narrated the incident to her parents. However, the parents prevented her from disclosing the incident to anybody as the marriage was to be solemnized under 15 days. On the next day, the applicant came to her house and declared that he will not solemnize marriage with the first informant. When she insisted for lodging first information report, her father beat her. Hence, she lodged report against the applicant as well as her father and mother.

4. The learned counsel for the applicant submitted that the first informant had extorted money from the applicant. The family members of the first informant, tried to resolve the differences. However, the marriage was called off and an agreement to that effect came to be executed on 10th February, 2023 under which the applicant paid a sum of Rs. 75,000/- to defray the expenses incurred in the betrothal ceremony. It was further submitted that the father and sister of the first informant have sworn affidavits adverting to the behaviour of the first informant and the falsity of

the allegations in the first information report.

5. The learned counsel for the applicant invited attention of the Court to the first information report bearing No. 231 of 2023 registered by the applicant against the first informant on 30th March, 2023 for the offences punishable under sections 384, 388, 504 and 506 of the Code. Attention of the Court was also invited to the pay-in slip, screen shots of money transfers and account extracts to lend support to the submission that the first informant had extorted money from the applicant.

6. Learned APP submitted that the custodial interrogation of the applicant is warranted to facilitate further investigation, especially for the medical examination of the applicant.

7. The learned counsel for the first informant submitted that the allegations in the first information report are grave. Since the parents of the first informant prevailed upon her not to lodge report, there was delay in lodging the first information report. The sister and father of the first informant have sworn affidavits after the first informant lodged the report. Therefore, no credence can be given to those affidavits.

8. Evidently, the first informant has implicated her parents along with the applicant, who allegedly sexually exploited her. The allegations against the parents though unusual are not

inconceivable. However, the entire context of the matter is required to be kept in view albeit for deciding entitlement to pre arrest bail.

9. The fact that Shivani, the sister of the first informant, and Tanaji, the father have sworn affidavits which support the applicant is understandable as Tanaji has been implicated as an accused. Yet, the statement of Shivani Jadhav recorded under section 164 of the Code of Criminal Procedure, 1973 before the learned Magistrate, at this stage, deserves consideration. In the said statement with regard to the alleged incident of forcible sexual intercourse on 16th January, 2023, Shivani states that the applicant had been to her house along with the first informant had a Sherbat and, thereafter, went away. The first informant was insisting for the ornaments which were prepared for the marriage and the cash and, therefore, there were disputes in her family. The said witness further referred to the fact that the first informant left the house 9th February, 2023 and did not return.

10. It is in the context of these statements, the allegations in the first information report are required to be appreciated. The gravamen of indictment against the applicant is that of forcible sexual intercourse on 16th January, 2023. The statement of Shivani Jadhav, a 19 year old sister of the first informant, prima facie contradicts the version of the first informant. The indictment

allegedly occurred on 16th January, 2023. Marriage, which was scheduled on 31st January, 2023, could not be solemnized. There is an agreement executed between the parties, to call off the marriage, on 10th February, 2023 Shivani states the first informant left her house on 9th February, 2023. First information report came to be lodged on 29th March, 2023. This time line also bears upon the probabilities of the case. There is material to indicate that the applicant had transferred and credited money to the account of the first informant.

11. In the aforesaid view of the matter, at this stage, a prima facie case can be said to have been made out in favour of the applicant. The applicant appears to have roots in the society. Possibility of tampering with the evidence and fleeing away from justice appears to be remote. I am, therefore, inclined to exercise the discretion in favour of the applicant.

12. In the event of arrest in C.R. No.228 of 2023 registered with Islampur police station, the applicant Swapnil Subhash Mane be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

13. The applicant shall cooperate with the investigation and attend Islampur police station, on 15th and 22nd October, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

14. The applicant shall submit to medical examination, if directed.

15. The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

16. The applicant shall regularly attend the proceedings before the jurisdictional Court.

17. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)