IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1940 OF 2023

Govinda S/o. Shankarrao Bhise ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Siddheshwar Biradar i/b. Mr. Ajinkya Reddy for the Applicant.
Mr. S.H. Yadav, APP for the Respondent -State.
Mr. Vijay Garad for the Intervenor.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th JULY, 2023.

P. C. :-

1. The Applicant apprehends his arrest in C.R. No. 463 of 2023 registered with Barshi City Police Station, District-Solapur (rural) for the offences punishable under Sections 354, 354-A, 500and 506 of the IPC and Section 67A of the Information Technology Act, 2000. Hence, this application under Section 438 of the Cr.P.C.

MEGHA SHREEDHAR PARAB

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2. Mr. Siddheshwar Biradar, learned counsel for the Applicant, submits that there is no prima facie material to show the involvement of the Applicant in committing offence under Section 67-A of the Information Technology Act. He submits that the offences alleged against the Applicant are essentially bailable offences and hence the

Applicant is entitled for bail as of right. He has relied upon the decision of the Apex Court in **Sharat Babu Digumarti Vs. Govt. (NCT of Delhi), 2017** ***(2017) 2 SCC 18*** and the decisions of this Court in ***Gagan Harsh Sharma and Another vs. State of Maharashtra through Sr. Police Inspector and Another, 2018 SCC Online Bom 17705, Pramod Anand Dhumal vs. the State of Maharashtra in Anticipatory Bail Application No.1114 of 2020.***

3. Per contra, Mr. S.H. Yadav, learned APP and Mr. Vijay Garad, learned counsel for the Intervenor submit that the Applicant has posted several lewd and sexually expressive posts on Facebook against the First Informant and other women in the family. It is submitted that the Applicant continued posting such derogatory and lascivious comments even after registration of the FIR. It is submitted that the Applicant, who has been targeting women and degrading them is not entitled for pre-arrest bail.

4. I have perused the records and considered the submissions advanced by the learned co unsel for the respective parties.

5. The First Informant is a teacher. Her father is a wholesale dealer of animal fodder and has a shop at Barshi. The First Informant

fell in love with one of employees of her father. She married him and they are presently employed at Dharashiv.

6. The father of the First Informant and the paternal uncle and aunt of the Applicant entered into an agreement for sale dated 29/03/2023 in respect of a plot at Barshi Industrial Area. The First Informant claims that irked by this transaction, the Applicant abused and threatened to cause death of her father.

7. The name of the First Informant is a name of a flower with beautiful fragrance. On 05/04/2023 the father of the First Informant came across a post on the Facebook account of the Applicant referring to the name of the First Informant and stating that her fragrance has spread all over Dharashiv. The posts also referred to the lover affair between the First Informnat and her husband. The Applicant, when questioned by the father of the First Informant, threatened that he would continue to defame all the ladies in the family. The father of the First Informant did not report the incident to the police apprehending social stigma.

8. The Applicant continued posting several such lewd comments referring to the First Informant and her love affair. The

paternal aunt of the First Informant is a Gynaecologist. She has her own hospital at Barshi since last 25 years and she also visits other hospitals. The Applicant posted derogatory and scandalous posts suggesting that the paternal aunt of the First Informant was having extra marital relationship with a MLA, her driver and her colleague, who is an Anesthetists. He made vulgar and obscene comments against her and her colleague suggesting that she went for a long drive with the Anesthetists, who fulfilled his lust in the car by causing lot of discomfort to her. Referring to her as 'xxx bhabhi' he commented that the web series in her name will make people forget 'Savita Bhabhi', a pornographic character.

9. The Applicant did not spare even the mother of the First Informant. He posted comments stating that she was having extra marital relationship with the driver. The facts narrated above is only a gist of the posts.

10. The material on record prima facie indicates that the Applicant has made lewd comments with an intention of outraging the modesty of the First Informant and other women in the family. He has invaded their privacy, violated their dignity and indulged in character assassination. The facebook posts particularly against the paternal

aunt of the first informant, who is compared to a pornographic character, are not only obscene, lewd or sexually coloured remarks but also refer to her sexual activity with her colleague. In my considered view, the term 'sexually explicit' would not only include audio or video but would also include verbiage or innuendo describing or implying acts of sexual nature, specially when voiced in derogatory tone. Hence, I am not inclined to accept the contention of the learned counsel for the Applicant that the FIR does not prima facie disclose offence under Section 67A of the IT Act. In the facts and circumstances, the decisions relied upon by the Applicant are not applicable to the facts of the case.

11. The records reveal that the Applicant had continued posting such posts on Facebook even after lodging of the FIR. In fact, in one such posts he has threatened to continue posting such lewd, derogatory and demeaning posts for next over one year. Considering the nature of accusations as well as the conduct of the Applicant, this is not a fit case to exercise discretion under Section 438 of the Cr.P.C. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)