

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.48 OF 2023
WITH
INTERIM APPLICATION NO.191 OF 2023
WITH
INTERIM APPLICATION NO.3233 OF 2023**

Abhishek Pushkar s/o.Prashar and Another ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr. Moin Khan a/w. Ms. Shafiya Shaikh, for the Applicants.

Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani, Mr. Irfan Unawala,

Mr. Sohail Khan i/b. W3 Legal LLP, for the Intervener.

Mr. S.H. Yadav, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 16, 2023

P.C.:

IA No. 191 of 2023 :-

1. This Interim Application is preferred by the first informant.

Hence, the Interim Application stands allowed.

ABA No. 48 of 2023 and IA No. 3233 of 2023 :-

2. Heard the learned counsel for the applicants and the learned APP for the State.

3. This application is preferred seeking pre-arrest bail in connection with C.R. No. 1102 of 2022 registered at Amboli police station for the offences punishable under sections 376, 420, 380, 509, 323 and 506 of Indian penal Code, 1860.

4. When the application was listed before the Court on 7th January, 2023 this Court was persuaded to grant interim bail observing, inter alia, as under:-

4] Reading of the FIR prima facie reveals that the relationship between the applicant no.1 and the complainant was consensual in nature. Both are married. Applicant no.2 is the wife of the applicant no.1. The complainant has made allegations against the applicant no. 2 that she has threatened to make obscene video of the complainant viral. It is also alleged that some jewellery of the complainant to the tune of Rs.11 lakhs is stolen by applicant no.2. Considering the nature of the allegations, in my opinion, the case for grant of interim protection is made out. Learned counsel for the complainant submitted that she feels threatened from the applicant no.1 who is said to be very influential. Applicant no. 1 is residing in Andheri East and the complainant is residing in Andheri West.

5. It would be contextually relevant to note that the Court had imposed following conditions:-

7] The applicants shall not tamper with the evidence or give threat or inducement to any of the prosecution witnesses.

8] It is made clear that any attempt on the part of the applicants to intimidate, threaten or approach the prosecutrix will be viewed seriously. The Investigating Officer then to take appropriate action.

6. The first informant has taken out Interim Application No. 3233 of 2023 seeking an order to cancel the interim bail granted by this Court by this aforesaid order on two grounds:

(i) The order of interim bail has not been passed after considering the material and hearing the parties including the first informant and in conformity with the principles which govern the grant of pre-arrest bail.

(ii) The applicants/accused have committed breach of the aforesaid conditions. The applicant No. 1 threatened the first informant out of her life, abused, insulted and assaulted her in order to coerce her to withdraw the allegations applicant No. 1. In respect of the said attempt to intimidate the first informant and tamper with evidence and prevent her from prosecuting the applicants, the first informant has lodged first information report bearing No. 636 of 2023 for the offences punishable under sections 354, 509, 323, 506 and 504 of Indian Penal Code, 1860. An offence punishable under section 195A of the Code also came to be added. As the applicants have violated the conditions of bail and there is an imminent threat to the first informant, the bail deserves to be cancelled.

7. The applicant No. 1 has filed an affidavit in reply contesting assertions in the said application. It is contended that the first informant and her associates, being aggrieved by interim protection granted to the applicants, raked up quarrel with the applicant No. 1

at a public place and made false and baseless allegations. The said first information report is lodged with a design to get the order of interim bail vacated.

8. I have heard Mr. Moin Khan, learned counsel for the applicants, Mr. Prashant Pandey, learned counsel for the Intervener and Mr. S.H. Yadav, learned APP for the Respondent/State at some length. It may be expedient to consider whether the applicants are entitled to pre-arrest bail.

9. The allegations in the first information report qua the applicant Nos. 1 and 2 can be considered in two parts. The gravamen of indictment against the applicant No. 1 is that the applicant No. 1 developed proximity with the first informant and by making false representation that the applicant No. 1 was intending to obtain divorce from his wife/ applicant No. 2, sexually exploited the first informant. It is alleged that the applicant taking undue advantage of the situation in life of the first informant emotionally, physically and financially exploited the first informant. Despite promise, the applicant No. 1 did not disclose the relationship between the applicant No. 1 and the first informant to his family members and continued to sexually exploit her.

10. Qua applicant No. 2, the first informant alleges, when she went to the house of the applicants and disclosed the relationship between the applicant No. 1 and first informant, both the applicants abused and assaulted her. On 13th October, 2022 applicant No. 2 came to the house of first informant and found first informant and the applicant No. 1 in her bedroom and recorded a video. Applicant No. 2 also allegedly committed the theft of a gold neckless and marriage string. On 27th October, 2022 when first informant had been to the house of the applicants, the applicants abused and assaulted her.

11. If the allegations in the first information report qua the applicant No. 1 are considered, it becomes evident that while the applicant No. 1 allegedly sexually exploited the first informant, both were in their tied in their respective marital bond. Prima facie, the first informant was aware that she as well as the applicant No. 1 were already married and, therefore, the consent for the alleged sexual intercourse can not be said to have been given under a misconception of fact on the basis of the representation to marry, allegedly made by the applicant No. 1.

12. If viewed through aforesaid prism, the allegations in the first

information report would indicate that the first informant and the applicant No. 1 were in a relationship outside marriage. It would, therefore, be prima facie difficult to sustain the submission on behalf of the prosecution and the first informant that an offence punishable under section 376 of the Penal Code can be said to have been squarely made out.

13. As regards the allegations against the applicant No. 2 which primarily consists of the theft of the gold ornaments on 13th October, 2022, it would be contextually relevant to note that on 27th October, 2022, the applicant No. 2 approached the police and lodged N.C. bearing No. 2094 of 2023. The applicant No. 1, inter alia, reported that on 27th October, 2022 the first informant had been to their house and raked up quarrel with her husband/ applicant No. 1 as to why he was not solemnizing marriage with the first informant, and the first informant pushed applicant No. 2, her daughter and threatened to falsely implicate them in a prosecution.

14. It would be contextually relevant to note that in the first information report itself, the first informant adverted to visit to the house of the applicants on 27th October, 2022. However, the first informant lodged the report in writing on 2nd November, 2022.

15. Moreover, the alleged theft occurred on 13th October, 2022. There is an element of delay in lodging the report of theft as well.

16. In the totality of the circumstances, the applicant No. 2 can be said to have reported a version which competes in probability with that of the first informant. A N.C complaint was lodged on 27th October, 2022 itself.

17. In this view of the matter, the applicants deserves the grant of pre-arrest bail. In any event, the interim bail is in operation since 7th January, 2023. Having regard to the nature of the accusations, the custodial interrogation of the applicants does not seem warranted. Therefore, the interim order, on merits, deserves to be made absolute.

18. This propels me to the prayer for cancellation of interim bail especially on the count of breach of the conditions extracted above. The said ground also bears upon the entitlement for pre-arrest bail, as a manifestation of possibilities of tampering with evidence and threatening the witnesses.

19. Mr. Prashant Pandey, learned counsel for the first informant

submitted that the applicant No. 1 after being released on interim bail continuously threatened the first informant. Adverting to the allegations in the first information report No. 636 of 2023 lodged on 1st September, 2023 in respect of the incident occurred on the previous day at about 8 pm, wherein the applicant No. 1 threatened, abused, assaulted and also outraged the modesty of the first informant, Mr. Pandey would urge that this furnishes a justifiable ground to cancel the interim bail and also dis-entitles the applicants from any discretionary relief.

20. Mr. Pandey placed reliance on an order passed by this Court in **Interim Application No. 1806 of 2021 dated 15th September, 2022** wherein, in the facts of the said case, this Court was persuaded to cancel the bail granted to the applicant therein. In the said case, the applicant therein had repeatedly attempted to intimidate his wife-victim therein. The Court adverted to various non-cognizable complaints and reports lodged against the applicant therein.

21. I have perused the aforesaid order. It turned on the peculiar facts of the said case. It is trite that the cancellation of bail already granted and rejection of a prayer of bail, at the initial stage, stand on a different footing. The bail once granted cannot be cancelled in a

mechanical manner without considering whether there are subsequent events and circumstances which render it unsafe to allow the accused to remain on bail from the perspective of ensuing a fair trial or safety of the victims and witnesses. Very strong and cogent reasons are, therefore, required to cancel a bail already granted.

22. A useful reference can be made to a pronouncement of the Supreme Court in the case of **Deepak Yadav vs. State of Uttar Pradesh and Another**¹ wherein it is held as under:-

31] This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retrain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

23. In the case at hand, the principal ground for cancellation of bail is the alleged breach of the conditions. The breach, in turn, is sought to be substantiated by making reference to the first information No. 636 of 2023. It seems, the applicant No. 1 was arrested in connection with the said crime and has since been released on bail.

1 (2022) 8 Supreme Court Cases, 559.

24. Nonetheless, the probabilities of the case deserve to be considered. There is a counter version of the applicant No. 1. It is, inter alia, asserted that the first informant had deliberately accosted and raked up quarrel with the applicant No. 1 and the applicant No. 1 had made repeated calls to police by dialing No. “100” to seek assistance. A copy of the call details (Exhibit A) appended to the affidavit in reply indicates that at the time of alleged occurrence from 8.11 pm to 8.37 pm, the applicant No. 1 repeatedly sought police assistance by calling number “100”.

25. The strained relationship between the parties, cannot be lost sight of. Lodging of the first information report, by the first informant, in the backdrop of the nature of the accusations and strained relations bordering on enmity, deserves to be appraised with caution.

26. I am, therefore, not inclined to draw an inference of breach of the conditions of the bail for the reason that a first information report was lodged by the first informant against applicant No. 1. Resultantly, I am not inclined to cancel the interim bail or hold that on account of the alleged incident resulting in lodging of the first information report No. 636 of 2022, the applicants do not deserve

the exercise of the discretion.

Hence, the following order.

ORDER

- 1] Interim Application No. 3233 of 2023 stands rejected.
- 2] Anticipatory Bail Application No. 48 of 2023 stands allowed.
- 3] The order of interim bail dated 7th January, 2023 is made absolute on the terms and conditions incorporated therein.
- 4] The applicants shall not contact the first informant in any manner whatsoever or threaten or induce the first informant or any of the prosecution witnesses or any of the persons acquainted with the facts of the case.
- 5] The applicants shall not enter the area of Azad Nagar, Andheri (west) for a period of one year from the date of uploading of this order.
- 6] The applicants shall regularly attend the proceedings before the jurisdictional Court.
- 7] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)