

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 515 OF 2023

Rizwan Sharif Patel ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Dilip P. Kamath a/w Ms. Sandhya Tiwari - Advocate for the Applicant
Mr. Ganesh Gole a/w Mr. Shaishav Savla i/by Adv. Aadesh Konde Deshmukh - Advocate for the Respondent No. 2.
Mr. S. R. Agarkar – APP for the Respondent-State
PSI Linkan Hasure – Koparkhairane Police Station, Navi Mumbai.

CORAM : S. M. MODAK, J.

DATE : 19th JUNE, 2023

P. C. :-

1. This Court as per Order dated 21/02/2023 was pleased to grant interim protection in case of arrest.
2. Today, I have heard learned Advocate for the Applicant and learned Advocate for the first informant and learned APP on the point of confirmation.
3. The first informant-Rubina Mohammad Shaikh is having one daughter name Anjuum. She has entered into an agreement of the leave and license on 25/04/2022 at Koparkhairane with Arfan Patel. Her case is that she has given deposit of Rs. 5 Lakhs towards the said transaction and the owner/licensor Arfan has not returned

the deposit amount even though possession is handed over. Accused No. 2-Afreen is wife of the said Arfan and present Applicant-Rizwan is residing in the same building in which Arfan resides.

4. On the date of the incident i.e. on 16th October, 2022, the said-Arfan called the first informant- Rubina to his house on the pretext of returning the amount. The first informant was accompanied by her daughter- Anjuum. Arfan Patel was not there in the house. On one hand the first informant and her daughter insisted that they will remain in the house, whereas, the Afreen Patel insisted that they should leave the house. For these reasons, there were certain altercations in between the first informant and said Afreen.

5. On this background, the present Applicant was called in the premises and thereafter, the incident has taken place and in respect of this, an offence came to be registered. The present Applicant sexually assaulted the first informant by trying to kiss her and pressed her chest. Earlier to this Police were also called however, they have left after convincing the parties. But thereafter the incident happened. The offence is registered under Sections 354, 354-B, 509, 323, 504, 506 read with 34 of the Indian Penal Code.

6. Even though the incident took on 16/10/2022, the F.I.R. came to be lodged on 23/11/2022. There is an affidavit-in-reply, the

first informant has opposed the confirmation of the anticipatory bail. There is photograph showing the hand. Furthermore, there is certificate issued by Navi Mumbai Municipal Corporation Hospital, at page no. 47. The Doctor has given history as 'there is assault on 17/10/2022 by two unknown ladies'. There was swelling noticed on middle finger of left hand. Furthermore, there is certificate issued by Dr. Vinayak Samant, dated 23/11/2022, at page no. 51, it is in respect of Anjuum, daughter of the first informant. It mentions that the said Anjuum is under his treatment from 27/10/2022, which is after 10 days from the incident.

7. There is complaint lodged by first informant to the Deputy Commissioner of the Police, which is on page no. 52. She has made complaint against Assistant Police Inspector, Smt. Smita Pawar. There are whats app messages on page no. 56 onwards exchanged in between the first informant and said Smita Pawar.

8. As against this, it is contended that the F.I.R. is lodged after 38 days and in fact on the date of the incident, the Applicant has received the certain leg injuries. Two photographs are produced, they are marked as 'Annexure-X'. It is true to say that there is no medical certificate annexed by the Applicant.

9. Learned APP pointed out that there are ten offences

registered against him. The report thereby opposing the bail is tendered on record and marked as 'Annexure-Y'.

10. There is no dispute that F.I.R. is lodged on 23/11/2022 after delay. It is very much true that on some occasions, it may happen that the victim of the crime particularly, when they are ladies, they are shy of stating the allegations involving the sexual abuses. So in such cases, delay has to be treated differently. However, I feel that it is not the case of such kind. So, I am inclined to confirm the anticipatory bail. It is for the reason that in the medical history of the patient-Anjuum, who is daughter of the first informant there is a mention that she was assaulted by two known ladies.

11. Though learned Advocate Shri Gole read over the avernments, on page no. 13-C which makes reference of the Afreen, who is one of the accused and the wife of the Rizwan/present applicant, alleging that both of them have pulled her, still in the history there is no reference that any male involved in the incident. So even though the allegation is of serious nature, I am inclined to confirm the anticipatory bail for the reason that there is a delay and medical history does not support it. Otherwise also, I do not find custodial interrogation is required. Even though there are criminal

antecedents, the present application needs to be decided on the basis of the merits of this matter.

12. Hence the following order is passed:-

ORDER

- (i) The Order dated 21/02/2023 is confirmed.
- (ii) The Applicant to co-operate the Police as and when called.
- (iii) The Applicant shall not threaten the prosecution witnesses.
- (iv) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail.

13. It is made clear that the these are my prima facie observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

14. Application is disposed of in the aforesaid terms.

15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]