

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 612 OF 2020**

1. Raju Yallappa Naik

2. Santosh @ Tukaram Maruti Shinde ...Applicants

Versus

The State of Maharashtra and anr. ...Respondents

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Mr. Satyavrat Joshi i/b Mr. Nitesh Mohite for the Applicant.

Ms Rutuja Ambekar, APP for the State.

Mr. Ravindra Jadhav, Hawaldar, Gadhingalaj Police Station.

Complainant is present.

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CORAM : N.R. BORKAR, J.

DATED : 2 FEBRUARY 2023

P.C. :-

This is an application under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail.

2. The applicants are apprehending their arrest in Crime No. 100 of 2020 registered at Gadhingalaj Police Station, Kolhapur for the offences punishable under Sections 354, 354-D, 504, 506 r/w 34 of the Indian Penal Code.

3. According to the prosecution, as the complainant was not helping the applicants in defaming the Superintendent of Police of Kolhapur District and thus they had sent obscene Whats App messages to her and

thereby outraged her modesty.

4. On 12 March 2020, this Court passed the following order:

“Heard.

1. Complainant is present before the Court. She seeks impleadment in the proceedings. In view of this, the applicant is directed to implead the complainant as respondent no.2 to the application. Amendment shall be carried out forthwith.

2. Complainant waives service of notice.

3. Applicant is directed to serve copy of the application to the complainant today.

4. Apprehending arrest in connection with C.R. No.100/2020 registered at Gadhinglaj Police Station for the offences punishable under Sections 354, 354D, 504, 506 read with Section 34 of the Indian Penal Code, the applicants are seeking pre-arrest bail.

5. I have perused the statement of the complainant recorded on 1st March, 2020 which prima-facie does not make out offence punishable under Section 354 of the Indian Penal Code.

6. Mr. Joshi, the learned Counsel for the applicants, contended that, the prosecution having realised that the statement of the complainant, at the first instance, may not make out offence under Section 354 of the Indian Penal Code, efforts were made to record the supplementary statement before passing the impugned order. In support of this contention, Mr. Joshi, has invited my attention to the say filed by the prosecutor before the learned Additional Sessions Judge. The ‘say’ does not refer to supplementary statement of the complainant recorded on 1st March, 2020. Mr. Joshi, further led me to the reply filed by the prosecution on 6th

March, 2020 before the learned Additional Sessions Judge. I have perused it. The said reply also does not make a reference to the supplementary statement of the complainant. It is therefore submitted, though supplementary statement is dated 1st March, 2020 it has been recorded after 6th March, 2020 to suit prosecution's case.

7. To verify whether, the supplementary statement was recorded after 6th March, 2020 or on 1st March, 2020, I have perused the case diary, but found it was not maintained in compliance of Section 172 (1-B) of the Cr.P.C.

8. Learned APP seeks time. Time granted. 9. In absence of satisfactory explanation as to why the prosecution did not refer to supplementary statement of the complainant in their say filed on 6th March, 2020, I am inclined to grant interim relief to the applicant. 10. Stand over to 2nd April, 2020. 11. In the meantime, in the event of arrest of the applicants in C.R. No. 100/2020 registered at Gadhinglaj Police Station, they shall be released on bail on furnishing P.R. Bond of Rs.25,000/-each (Rs. Twenty Five Thousand only) with one or two sureties in the like sum.

12. The applicants shall report to the Investigating Officer on 24th and 30th March, 2020 between 11:00 to 1:00 p.m.

13. The applicants shall furnish the particulars of their place of residence and contact details to the Investigating Officer of the Police Station concerned within seven days from today.

14. The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.”

5. The learned APP submits that during the pendency of present application, the prosecution has filed the charge-sheet against the present applicants.

6. Considering the overall facts and circumstances of the case and in view of filing of the charge-sheet, I am inclined to allow the present application. The interim order dated 12 March 2020 passed by this Court is hereby confirmed subject to the following conditions:

- (i) Applicants shall not enter into the limits of Taluka Gadhingalaj except to attend the dates before the trial Court till conclusion of trial.
- (ii) The learned counsel for the applicants, on instructions, submits that applicants shall not seek the relaxation of the aforesaid condition.
- (iii) The applicants shall not contact either directly or indirectly to the respondent No. 2/Complainant.

7. Application is disposed of.

(N.R. BORKAR, J.)