

AGK

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

ANTICIPATORY BAIL APPLICATION NO.755 OF 2023

Kailas Baburao Lonkar ... Applicant

V/s.

The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.2093 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.755 OF 2023

Salma Salim Shaikh ... Applicant

In the matter between

Kailas Baburao Lonkar ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Amit Icham for the applicant in ABA.

Mr. Sachin M. Bhavar for the applicant in IA.

Mrs. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 22, 2023

P.C.:

- 1.** For the reasons stated therein, Interim Application No.2093 of 2023 seeking intervention is allowed.
- 2.** Apprehending arrest in connection with C.R. No.1253 of 2022 dated 21 December 2022 registered with Kondhwa Police Station, District Pune for allegedly having committed the offences

punishable under Sections 376(2)(D), 376(N), 377, 354(K), 354C, 506, 500, 507 read with 34 of the Indian Penal Code, 1860 read with Section 66(E), 67 of the Information Technology Act, 2000, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

3. According to prosecution, initially report under Sections 354, 500 and 507 of the Indian Penal Code, 1860 and Sections 66(e) and 67 of the Information Technology (Amendment) Act, 2008 was lodged on 21 December 2022. It is alleged that the informant is residing with her son and daughter-in-law who is a driver. The informant is divorced. The informant was live-in relationship with the applicant. About three to four months prior to the report, the applicant and informant had dispute on various issues. On 20 December 2022, the applicant posted indecent photographs of the informant and applicant on his Facebook page, which according to the informant was without her permission and consent and caused her defamation. The informant, therefore, lodged a report against the applicant.

4. On 11 January 2023, the informant through her Advocate sent a notice seeking compensation of Rs.10 crore for posting her indecent photographs on the Facebook page, which was replied by the applicant through his Advocate on 21 January 2023.

5. On 25 January 2023, it appears from the investigation record, that the supplementary statement of the informant was recorded wherein she, for the first time, alleged that in December 2018 the applicant spiked her drink and he along with his friends

committed forcible sexual intercourse with the informant. Again five months prior to the supplementary statement, the applicant along with others had forcible sexual intercourse with the informant.

6. The applicant, therefore, filed application before the learned Sessions Judge seeking relief under Section 438 of the Criminal Procedure Code, 1973 which came to be rejected by order dated 21 February 2023. The applicant, therefore, filed present anticipatory bail application.

7. I have heard learned advocate for the applicant, learned APP and learned advocate for the victim. I have perused the case diary. On prima facie perusal of the material on record, it appears that in the initial report lodged by the informant on 21 December 2022, she has not stated about alleged gang rape committed in December 2018 and not stated anything about incident of gang rape five months prior to the recording of supplementary statement. In the legal notice issued through Advocate, she has failed to mention about the incident of gang rape. It needs to be noted that the informant in her initial report dated 21 December 2022 has stated that she is in live-in relationship with the applicant for few years. It is also stated that the applicant and informant have disputes for various reasons before lodging of report. Absence of mention of alleged incident of gang rape in the report and legal notice, prima facie supports the case of the applicant of false implication. Moreover, the allegations need to be considered in the light of facts stated in the report that the applicant and informant were in live-in relationship and have disputes for three to four months prior to

lodging of the report. Hence, the applicant has made out a case for grant of relief under Section 438 of the Criminal Procedure Code, 1973.

8. In so far as offence under Section 354(c) and 66(e) and 67 is concerned, on prima facie perusal of the photograph produced on record, it appears that the photograph does not contain image of private area of the informant. Private area has been explained in Explanation (c) of Section 66(c). In the light of explanation (c) to Section 66(c), I have scrutinized the photographs and I am of the prima facie opinion that Section 66(e) is not attracted.

9. In so far as offence under Section 67 is concerned, the punishment for first conviction is three years. Considering the nature of relationship and allegations against the applicant, custodial interrogation of the applicant is not required. Hence, following order:

a) In the event of arrest of the applicant in connection with C.R. No.1253 of 2022 dated 21 December 2022 registered with Kondhwa Police Station, District Pune for allegedly having committed the offences punishable under Sections 376(2)(D), 376(N), 377, 354(K), 354C, 506, 500, 507 read with 34 of the Indian Penal Code, 1860 read with Section 66(E), 67 of the Information Technology Act, 2000, he be released on bail on furnishing PR. Bond in the amount of Rs.50,000/- with one or two sureties in the like amount;

b) The applicant shall remain present before the investigating officer on 23, 26 and 28 June 2023 between 11.00 a.m. to 2.00

p.m. and thereafter as and when required by the concerned investigating officer;

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

f) The applicant shall not contact the victim nor shall influence the victim or coerce her for either withdrawal of the complaint or doing act which would hamper either the investigation or the trial;

g) The applicant shall hand over his cell phone to the investigating officer on 23 June 2023.

10. The anticipatory bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)