

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH
SUBHASH
KULKARNI
Date: 2023.09.16
17:48:18 +0530

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

ANTICIPATORY BAIL APPLICATION NO. 106 OF 2023

Imran Aman Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 116 OF 2023

Aslam Abdul Hafij Kureshi ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 964 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO. 116 OF 2023

Aslam Abdul Hafij Kureshi ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 236 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO. 116 OF 2023

AAA ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 184 OF 2023

Mushtaq Aman Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ajay Bhise, for the Applicant in ABA/106/2023.

Mr. Niranjan Mundargi, i/b Ajay Bhise, for the Applicant in
ABA/116/2023 and ABA/184/2023.

Mr. Samir Pradhan, a/w Amrish Salunke, Ashma Ashrafi &
Jigar Agarwal, for respondent No.2/Intervener. .

Mr. Mahesh Waswani, a/w Chitra Salunkhe, i/b Shreya
Tiwari, for the Applicant in IA/236/2023.

CORAM: N. J. JAMADAR, J.

DATED: 14th SEPTEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicants and the learned APP for the State.
2. These applications for pre-arrest bail in connection with CR No.475 of 2022 registered with Koparkhairane Police Station, Navi Mumbai, for the offences punishable under Sections 376, 376(1), 504, 506, 506(2) read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant's marriage was solemnized with the applicant "A" (applicant in ABA/116/2023) in the year 1996. They have been blessed with a son (24 years) and daughter (21 years). The first informant and "A" cohabited till the year 2009. On account of matrimonial discord, first informant started to reside separately alongwith her children. In the month of March, 2020, the first informant came to reside at Koparkhairne alongwith her children.
4. The first informant alleged in the month of April, 2020 her husband "A" came her home and made the son and

daughter to go out of home. Immediately, thereafter A's friend "M" (applicant in ABA/184/2023) came to her home. "A" asked the first informant to have sexual intercourse with "M". When she resisted, "A" threatened the first informant and went out by locking the first informant and "M" in her home. Thereafter "M" allegedly had forcible sexual intercourse with her without her consent. After a fortnight A's another friend "I" (applicant in ABA/106/2023) sexually exploited the first informant in a similar fashion. The first informant alleged that during the period April, 2020 to September, 2020, she was repetitively subjected to sexual exploitation by the applicant "A", "M" and "I". As the exploitation continued the first informant claimed to have lodged a complaint of domestic violence against the applicant "A" in the month of September, 2021. "A" falsely claimed that he had given divorce to the first informant. Eventually, the first informant lodged the report on 11th November, 2022.

5. When the applications were listed before this Court on 20th January, 2023 this Court was persuaded to grant interim relief as, *prima faice*, it appeared that there was huge delay in lodging the FIR.

6. The first informant assailed the said order before the Supreme Court in SLP (Cri) Diary No.3686/2023 and connected matters. The Supreme Court declined to interfere with the aforesaid order while granting liberty to the petitioner/first informant to appear and argue the matter before this Court.

7. Thereupon the first informant has appeared and, initially, contested the application.

8. Today, the learned Counsel for the first informant submits that the first informant has filed an affidavit in ABA/116/2023 affirming, *inter alia*, that she had lodged the report under duress of certain persons named in the said affidavit. The first informant has now disowned the allegations in the FIR.

9. Nonetheless, since the first informant had carried an interim order before the Supreme Court and in view of apparent ambivalent stand of the first informant, I have heard the learned Counsel for the applicants and the learned APP and perused the material on record to independently assess the prayer for pre-arrest bail.

10. Mr. Mundargi, the learned Counsel for the applicant “A” (ABA/116/2023) submitted that the applicant is in fact the quondam husband of the first informant. Their marriage was dissolved in the year 2010 and the applicant has solemnized marriage with another lady. The first informant has, however, been harassing the applicant and his family members. Mr. Mundargi further submitted that the falsity of the allegations in the FIR is borne out by the fact that in the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, being CC No.274/DV/2021, filed in the month of September, 2021, there are no allegations of the alleged sexual exploitation of the first informant during the period of April, 2020 to September, 2020. If the delay of more than two years in reporting the alleged offences is considered in the light of the aforesaid development in the intervening period, Mr. Mundargi would urge, a strong *prima faice* case is made out in favour of the applicant.

11. Mr. Bhise, the learned Counsel for the applicant in ABA/106/2023 supplemented the submissions of Mr. Mundargi.

12. Mr. Pethe, the learned APP, with reference to the allegations in the FIR fairly submitted that the aspect of delay and the nature of the allegations deserved to be taken into account.

13. The probability of the allegations in the FIR is required to be appreciated in the light of the fact that the applicant claimed to have been residing with two grown up children in the house where she was allegedly exploited repetitively. Secondly, the fact that the alleged exploitation, particularly at the instance of her husband, "A", was not referred to in the complaint under Domestic Violence Act cannot be brushed aside as inconsequential or immaterial. *Prima facie*, the alleged sexual exploitation at the behest of "A" was such a notorious fact that its omission in the complaint under Domestic Violence Act is rather inexplicable. Thirdly, the element of delay assumes critical salience. Fourthly, the first informant claimed to be working as a teacher. *Prima facie*, the first informant had means and opportunities to report the matter and divulge the details at least to her grown up children. All these factors, if considered cumulatively, *prima facie* render the prosecution version inherently improbable.

14. Now the first informant has disowned the allegations in the FIR by affirming that she was coerced by the persons named in the affidavit, to lodge the same.

15. I am, therefore, inclined to hold that, even if the affidavit of the first informant is eschewed from consideration, the nature of the accusation in the FIR is such that the applicants deserve pre-arrest bail.

16. Hence, the following order:

: O R D E R :

- (i) In the event of arrest of the applicants, in ABA/106/2023, ABA/116/2023 and ABA/184/2023, in CR No.475 of 2022 registered with Koparkhairane Police Station, Navi Mumbai, the applicants be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.
- (ii) The applicants shall cooperate with the investigation and report to the Investigating Officer as and when directed.
- (iii) The applicants shall not tamper with the prosecution evidence and give threat or inducement to the first

informant and any person acquainted with the facts of the case.

- (iv) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Applications stand disposed.

In view of disposal of ABA/116/2023, Interim Application No.964/2023 and Interim Application No.236/2023, do not survive and stand disposed.

[N. J. JAMADAR, J.]