



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.847 OF 2023

Subhash Baban Kumbhar

...Applicant

vs.

The State of Maharashtra And Anr.

...Respondents

Mr. Aditya Raktade, for the Applicant

Mr. M. G. Patil, APP for the Respondent No.1/State.

Mr. Samay Pawar, for Respondent No.2.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 9, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This is an application for pre-arrest bail in connection with C.R. No.0107 of 2023, registered with Karveer Police Station, Kolhapur for the offences punishable under Sections 376(1), 376(2)(n), 406 and 506 of the Indian Penal Code, 1860 ("the Penal Code").

3. The first informant-Respondent No.2 runs a hotel. She became acquainted with the applicant, who was working as a teacher in the primary school at Gadegaondwadi, Taluka Karveer, District Kolhapur, where the first informant's daughter was studying. Proximity developed between the first informant and the applicant.

4. The first informant alleged that the applicant induced her to sell agricultural land and ornaments by making a representation that he would construct a house for her. A sum of Rs.29,00,000/- was allegedly paid by the first informant to the applicant. However, the applicant didn't construct house, as promised. Instead whenever the first informant insisted for construction of the house, as promised, the applicant sexually exploited her during the period of 2017 to 2022, at various places. The applicant allegedly threatened the first informant not to disclose the said acts of sexual exploitation to anyone, lest her husband and children would be killed.

5. As the relationship between the applicant and the first informant became known to the husband of the first informant there was discord between the first informant and her husband. Since one and half years prior to the lodging of the report, the first informant stopped meeting the applicant. However, the applicant insisted the first informant to part ways with her husband and continue to have relationship with him.

6. The learned counsel for the applicant submitted that the very allegations in the FIR unmistakably indicate that the applicant and the first informant were in a long standing relationship. The FIR came to be lodged as a counter blast to the report lodged by the

daughter of the applicant against the son of the first informant for the offences punishable under Sections 354, 354D of the Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act, 2012 on 1st February 2023. Emphasis was laid on the fact that the instant FIR came to be lodged after about 22 days of the said FIR. It was submitted that the physical relations between the applicant and first informant were consensual. The applicant had, in fact, constructed a house for the first informant and for which the first informant had made some contribution. However, after the daughter of the applicant lodged the report against son of the first informant, the latter lodged a report making untrue allegations.

7. As against this, the learned APP and the learned counsel for the first informant resisted the application for pre arrest bail. The learned APP and learned counsel for the first informant laid emphasis on the aspect of misappropriation of the amount by the applicant by making a false representation of constructing a house for the first informant.

8. The learned counsel for Respondent No.2 invited the attention of the Court to the documents evidencing the credit of the amount to the account of the applicant.

9. I find substance in the submissions of the learned counsel for the applicant that the allegations in the FIR, *ex facie* indicate a long standing relationship outside marriage between the applicant and first informant. The first informant allegedly became acquainted with the applicant in the year 2014. The relationship developed during the period of 2014 to 2017. The first informant alleged that she was sexually exploited during the period of 2017 to 2022. The first informant claimed to have sold the land, liquidated gold ornaments and thereafter paid the amount to the applicant. For fulfilling the promise of constructing the house, the applicant allegedly sexually exploited the first informant.

10. *Prima facie* this version, even at this nascent stage, does not appeal to human credulity. What *prima facie* impairs the prosecutrix's version is the claim of the prosecutrix that since one and half years prior to the lodging of the report, she had snapped the ties with the applicant. If that was the case, the delay in lodging the report further erodes the credibility of the prosecutrix's version as regards the sexual exploitation. The submission on behalf of the applicant that the applicant and the first informant were in a consensual relationship gains credence from the allegations in the FIR. Further submission on behalf of the applicant that the report lodged by the daughter of the applicant against son of the first

informant operated as a trigger for the instant FIR, also *prima facie* carries substance.

11. In the aforesaid view of the matter, I am inclined to confirm the interim protection granted by this Court by order dated 21st March, 2023.

12. Hence, the following order :-

O R D E R

- i] In the event of arrest of the applicant-Subhash Baban Kumbhar in connection with C.R. No.0107 of 2023, registered with Karveer Police Station, Kolhapur the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- iii] The applicant shall co-operate with the investigation and attend Karveer Police Station on 18th, 19th and 20th October 2023 in between 10 am to 1 pm.
- iv] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.

- v] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- v] The application stands disposed of.
- vi] It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)