IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1041 OF 2022
WITH
ANTICIPATORY BAIL APPLICATION NO. 429 OF 2022
WITH
INTERIM APPLICATION NO. 799 OF 2022

Sachin Bhausaheb Gunjal ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Uday Warunjikar i/b. Hulyalkar & Associates for the Applicant in both the Applications.
Mr. Tapan Thatte for the Intervenor,
Mr. Y.Y.Dabke, APP for the State.

CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 3rd APRIL, 2023.

P.C.

1. The Applicant has filed these applications under Section 438 Cr.P.C. apprehending his arrest in C.R.No.679 of 2021 registered with Dehu Road Police Station, Pimpri Chinchwad for offences under Section 377, 406, 420, 506 r/w. 34 of the Indian Penal Code, and Crime No. 40 of 2022 registered at Vishrambaug Police Station, Sangli, for offences under Section 354, 406,420, 504, 506 r/w. 34 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant, learned APP for the State and learned Counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned Counsel for the

respective parties .

3. The facts narrated in the First Information Report prima facie disclose that the Applicant had given his profile on matrimonial site. He came in contact with the first informant and later they decided to get married. The first informant has alleged that the in the year 2017, the Applicant induced her to avail loan of Rs.5,30,000/- in her name, under the pretext that he wanted to start a petrol pump business. The loan amount was credited in the account of Sujit Karnarkar. It is stated that the Applicant herein had assured the Complainant that he would repay the loan. However, he did not repay a single installment, and she continues to repay the amount of Rs.6399/- per month towards the said loan amount.

4. It is further alleged that between 2018 to February 2020, the Applicant borrowed from the Complainant an amount of Rs.5,95,000/- under the pretext that his brother needed the same to pay Income Tax. She further claims that the Applicant also proposed that they should start a new business for her brother, and for this purpose, in the year 2020 she was made to obtain loan of Rs.11,00,000/- from HDFC Bank and Rs, 4,00,000/- from YES Bank. The first informant claims that she is paying the EMI in respect of the said loan amounts.

5. The first informant has further stated that on 7.2.2021 the Applicant came to her house under the influence of alcohol and that he had unnatural sexual intercourse with the first informant. She claims that the Applicant had threatened her not to lodge a police complaint. She has stated that the cheques issued by the Applicants were dishonoured and that she has already filed a proceeding under Section 138 of N.I.Act. The allegations in the first information report, in short, are that from 2018 to 2020, the Applicant and his friend induced the Complainant in taking loan and investing money in a partnership firm. She claims that they have cheated her to the tune of Rs.38,82,000/-.

6. The second FIR dated 2.2.2022 is lodged by another victim. She claims that she came to know the Applicant through a matrimony site in June 2019. The Applicant allegedly outraged her modesty, and later avoided to marry her. The first informant married to another person on 14.07.2020 with consent of her parents. She claims that subsequently she told her husband about the Applicant, and that he convinced her to lodge a complaint against the Applicant for cheating her for an amount of Rs.14,00,000/- and for outraging her modesty.

7. A perusal of the FIR dated 28.12.2021 prima facie reveals that the Applicant and the first informant had met on a matrimonial site. It appears that both of them had decided to marry and had also entered into

a business transaction. The Applicant subsequently refused to marry the first informant.

8. It is pertinent to note that the Applicant was unmarried as on the date he was registered on the matrimonial site and got acquainted with the first informant in this crime. There is no prima facie material on record to indicate that the Applicant had intention to cheat the first informant right from the inception. A mere fact that he refused to marry her at later stage would not prima facie make out an offence of cheating. Though the Complainant has alleged that the Applicant had sexually abused her on 7.2.2021, there is no reference to this incident in her complaint dated 19.04.2021 or in subsequent complaints lodged by her before the Police Inspector. The records also reveal that the Applicant had lodged a complaint on 6.12.2021 alleging that the first informant had threatened to rope him in a rape case. The records also prima facie indicate that even after the said incident, the Applicant and the first informant were constantly in touch with each other. This conduct would also prima facie raise a doubt about the alleged incident of 7.2.2021.

9. The business started by the Applicant and the first informant was wound up. It appears that the Applicant has not cleared the accounts and that the first informant continues to pay the loan installments. The dispute between the parties appears to be over business transaction. The

Applicant is on interim bail since June 2022. It is stated that the Applicant has already deposited an amount of Rs.15,00,000/- before this Court. Investigation is almost completed. Considering the said facts and particularly the nature of accusation against the Applicant and the material in support thereof, in my considered view, this is not a case which would justify custodial interrogation.

10. As regards the second FIR registered before Vishrambaug Police Station, the first informant has stated that the Applicant herein had borrowed cash of Rs.14,00,000/- on 17.10.2019. The first information report regarding this incident has been lodged on 2.2.2022. There is thus considerable delay in lodging the FIR. There is also no prima facie material to show the source of income of the first informant or that she had means to pay to the Applicant cash of Rs.14,00,000/-. This prima facie raises a suspicion regards commission of the alleged offence. Under the circumstances, this is a fit case to exercise discretion under Section 438 of Cr.P.C.

11. Hence the applications are allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime Nos.679 of 2021 registered with Dehu Road Police Station, Pimpri Chinchwad, and

Crime No. 40 of 2022 registered at Vishrambaug Police Station, Sangli, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) in each of these crimes, with one or two sureties in the like amount;

(ii) The Applicant shall report to the Investigating Officer as and when required by the Investigating Officer.

(iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

(iv) The Applicant shall not interfere with the Complainant and the other witnesses, or tamper with the evidence in any manner.

. Both Applications stand disposed of.

(ANUJA PRABHUDESSAI, J.)