

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

ANTICIPATORY BAIL APPLICATION NO. 1131 OF 2023

Sarvar Anwar Khan

Age : 35 Years, Occupation : State agent,
Residing at : A/01, Sahara Apartment,
Dadi Colony, Pipe Compound, Amrut Nagar,
Mumbra – Mumbai : 400612.

...Applicant

VS.

The State of Maharashtra
[Mumbra Police Station - Thane]

...Respondent

Ms.Tahera Qureshi – Advocate for Applicant.

Mr.Taraq Sayed a/w Mr.Shivraj Pawar a/w Mr.Advait Tamhankar –
Advocates for original Complainant.

Mr.H.J.Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 2nd MAY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant, learned APP for the Respondent-State and learned Advocate for First-Informant.
2. Admittedly, the First-Informant has not filed any Intervention Application. When Mr.Taraq Sayed has made oral submissions on behalf of the First-Informant, it is opposed on behalf the Applicant.

So far as the right of audience of the First-Informant at the time of hearing of anticipatory or regular bail is concerned, it is well settled. Now, the issue is whether it can be given after filing written application or on the basis of oral request only. It is also true that this Anticipatory Bail Application is filed on 11th April, 2023. No doubt, it is true that the client to whom Mr.Taraq Sayed is representing is the First-Informant. Considering the fact that Mr.Sayed has not expressed any desire to file any documents but he has restricted himself in pointing out the averments in the FIR, I have heard him even though there is no written application.

3. Present Applicant is one of the Accused in an offence lodged by the First-Informant Mikhdad Kurban Hussain Khambati. It was lodged with Mumbra Police Station on 22nd June, 2022. An offence under Sections 328, 384, 385, 392, 323, 500, 120-B , 501 came to be registered against various persons.

4. The sum and substance of the allegation in FIR is that the First-Informant was called by one Rashida Tole who is one of the Accused. She was introduced with the First-Informant by one Saifuddin who is another Accused. The First-Informant claims that Saifuddin is the son of one Fida Hussain who is the employee of the First-Informant.

5. After introduction, the said Rashida Tole started interacting with the First-Informant by different modes and on different pretext. She was in need of legal advice for the purpose of purchase of a room for running a beauty parlor. The incident in question took place on 14th March, 2022 when the said Rashida called the present First-Informant to her room at Mumbra.

6. After initial discussion, the First-Informant was given juice for drinking. After consumption, he has not understood when he became unconscious. After regaining consciousness, he realized that he was only wearing the underwear. He also realized that there are other persons. Out of them, one Hussain Tole is the husband of said Rashida. The said Hussain Tole confronted the First-Informant about his alleged conduct with his wife. He was also beaten. The present Applicant claimed to be a press reporter, has videographed the incident in his mobile.

7. The Co-accused Saifuddin was also called later on in the flat. All the Accused persons blackmailed the First-Informant on the pretext that they will make viral the video and he was demanded to part away Rs.25,00,000/-. Subsequently, it was settled to Rs.15,00,000/-.

8. Further, he has alleged that he has called certain persons for raising of money and First-Informant along with some of the Accused persons have met them and finally the First-Informant paid Rs.5,00,000/- to the said Saifuddin.

9. The First-Informant has also alleged about whats-app chatting with the said Rashida. Even he knows that the said Saifuddin son of his employee is also chatting with the said Rashida. Even he has stated that some porn videos are also sent by him to said Rashida. The First-Informant realized that the said Rashida is in love with him.

10. Now, the present Applicant is asking for protection from arrest. Learned APP and learned Advocate Shri.Sayed have invited my attention to various references in the FIR thereby showing involvement of the present Applicant. As on today, the said Hussain Tole and one Khan were arrested and Police have recovered some of the incriminating materials from them including part of the cash amount. Both of them have pleaded that custodial interrogation of this Applicant is required.

11. As against this, it is submitted on behalf of the Applicant that for what purpose, custodial interrogation is required. If at all they

want to seize mobile handset, he can very well produce it. Furthermore, it is contended that there is no allegation that the First-Informant at any time paid the amount of alleged extortion to the present Applicant.

12. My attention is also invited to an order passed by the Hon'ble Supreme Court on an Application filed by said Saifuddin. It is taken on record and marked as Annexure-X. There is direction not to take coercive step subject to said Saifuddin reporting to the Police. According to learned Advocate Shri.Sayed, the role alleged against the said Saifuddin is different from this Applicant and there is allegation that the present applicant has done the video shooting on mobile.

13. After hearing all of them and perusing the averments in the FIR, the contention raised that whether the Applicant is having physical relationship with the said Rashida on that date or not, cannot be gone into in this Bail Application. Even though there may be background of allegations showing some relationship in between the First-Informant and the said Rashida, the present offence is registered on the basis of events that took place after the First-Informant's cloths were removed after giving some juice to him for

drinking. This FIR pertains to the incident about recording of those incidents and subsequent events of pressuring the First-Informant to part away certain amount and he has also parted away certain amount.

14. If these incidents are considered, I am of considered view that there is prima facie allegations against the present Applicant for which his custodial interrogation is required. The allegation consists of doing video recording on his mobile. It consists of accompanying the First-Informant in a car when he had gone for arranging the amount. It consists of also giving assurances to delete that mobile video shooting. So, question does not arise only on production of mobile handset by the Applicant. Investigation pertains to the area which is beyond that. So, I do not think that case for anticipatory bail is made out. His custodial interrogation is required. Hence, Application is rejected.

15. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

[S. M. MODAK, J.]