

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1704 OF 2023**

Sunilkumar Shankar Sahu	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Shambhu M. Jha for the Applicant.
Mr. S. R. Agarkar APP for the Respondent-State.
Mr. Vinayak Jadhav, API, Nayanagar police station present.

CORAM : S. M. MODAK, J.

DATED : 26TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. While allegations in the FIR are perused, one can very well say that they are serious. The present Applicant and his wife are named in the FIR. It is present Applicant, who had sexual intercourse with the first informant. Whereas his wife-co-accused assisted the present Applicant by not opposing the act of Applicant. In fact, the charge-sheet is also filed in the offence punishable under sections 376(2)(f) read with 34 of IPC. It is on page 66. The present Applicant is shown as wanted accused.

3. The present Applicant and the first informant are related to each other. The present Applicant is cousin brother-in-law of the first informant. The incident took place on 23rd March 2023, at about 8 am. Co-accused-Mamta Sahu telephoned the first informant and called her on the pretext that she is not keeping well and her husband i.e. present Applicant is not there in house. The first informant went to the house of present Applicant on the same day but at evening time at about 7.30 pm. When both ladies were chit-chatting, present Applicant came from bed room and caught her hand and took her in the bedroom and thereafter incident of sexual intercourse has taken place. FIR is lodged on 25th March 2023, with Nayanagar police station under sections 376(2)(f) read with 34 of IPC.

4. Learned APP brought my attention to the medical papers from page Nos.101 to 107. He also submitted that there is statement of neighbour on page 137. He is one Hemant Chavan. I have perused it. He had seen few of the lady relatives entering the house on 23rd March 2023, at 19.30 hours and after sometime leaving the house. According to learned APP, opinion is reserved for report of the Chemical Analyser.

5. Whereas according to learned Advocate for the Applicant there is background to this incident. Furthermore, the case papers fall short to suggest sexual intercourse. He relied upon the following circumstances :

- (a) Handing over loan of Rs.3,00,000/- by the present Applicant to Surajdev Sahu, who is husband of the first informant and first informant Anika Sahu on 30th June 2022, i.e. earlier to the incident. Promissory note which is on page 31.
- (b) Though the Applicant is initially involved in another offence bearing C.R. No.154 of 2023, registered with Kashimira police station and though police have filed charge-sheet which is on page 41 onwards. This Applicant is not charge-sheeted for want of evidence. (page 44). It is contended that the first informant in that FIR is connected to present first informant.
- (c) It is contended that husband of the first informant is also involved in offence under section 370 of IPC and few sections of the Immoral Traffic (Prevention) Act.
- (d) In order to throw some light about conduct of the first informant, there is reliance placed on the photographs

showing the first informant and the Applicant on social media.

It is on 23rd March 2023, at 9.05 am immediately after the incident and he claims that she is seen in happy mood.

6. Already, the charge-sheet is filed against co-accused. No doubt, the allegations are serious. But I do not think that custodial interrogation of the Applicant is required. Already medical examination of the victim-first informant has taken place. The Applicant can be medically examined even after he is released on anticipatory bail and attendance is granted.

7. Granting of hand loan by the present Applicant to the first informant and her husband and there is delay of lodging FIR for two days which weigh my mind to grant anticipatory bail. Though other circumstances does not weigh my mind they cannot be altogether overlooked. So I am inclined to grant anticipatory bail to the Applicant. Hence, the following order is passed :

ORDER

- (a) In the event of arrest, in connection with C.R. No.174 of 2023, registered with Nayanagar police station for offences punishable under sections 376(2)(f) read with 34 of IPC. the

Applicant-Sunilkumar Shankar Sahu be released on bail on furnishing personal bond and surety bond of Rs.25,000/-.

- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
 - (c) The Applicant shall give attendance to the Nayanagar police station on every first and third Wednesday from 10 am to 12 noon till filing of the charge-sheet.
 - (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of anticipatory bail, after notice to the Applicant.
8. Application is disposed of accordingly.
9. These are my prima facie observations and the trial Court may not be influenced by that.
10. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]