

AGK

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

ANTICIPATORY BAIL APPLICATION NO.909 OF 2023

Zeeshan Salim Kolhapurwala

... Applicant

V/s.

The State of Maharashtra

... Respondent

WITH

INTERIM APPLICATION (ST.) NO.11925 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.909 OF 2023

Naila Azim Kolhapurwala

... Applicant

In the matter between

Zeeshan Salim Kolhapurwala

... Applicant

V/s.

The State of Maharashtra

... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.821 OF 2023

Azim Salim Kolhapurwala

... Applicant

V/s.

The State of Maharashtra

... Respondent

WITH

INTERIM APPLICATION (ST.) NO.11926 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.821 OF 2023

Naila Azim Kolhapurwala

... Applicant

In the matter between

Azim Salim Kolhapurwala

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr. Shailesh Kharat with Mr. Burhan Bukhari i/by Mr. Vaibhav Jagdale for the applicant in both ABA.

Mrs. Rutuja Ambekar, APP for the respondent/State.

Ms. Shabnam Shaikh with Mr. Mushahid Khan for original complainant/intervenor.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.18 of 2023 registered with Samarth Police Station, Pune under Sections 376, 376(2)(n), 377, 498-A, 406, 504, 506 and 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, marriage between accused No.1 (Azim Salim Kholhapurwala) and informant took place on 21 November 2021. According to informant, from January 2022 till 15 November 2022 accused No.1 performed unnatural sex with the informant and accused No.2 (Zeeshan Salim Kolhapurwala) who is brother-in-law of the informant committed forcible sexual intercourse with the informant from February 2022 till 15 November 2022. Accused No.3 is the mother-in-law of the informant.

3. Both the applicants, therefore, filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court which came to be rejected by order dated 28 February 2023. The applicants, therefore, filed present anticipatory

bail applications in this Court.

4. I have heard learned advocate for the applicants, learned APP and learned advocate for the victim. On perusal of the report and material on record, it prima facie appears that the details of incidents against accused No.2 (brother-in-law) are neither referred to in the report nor in the statement recorded under Section 164. Vague allegations are made that from February 2022 till 15 November 2022 accused No.2 had forcible sexual intercourse with the informant. Report is lodged on 16 January 2023.

5. During the course of arguments, learned advocate for the victim, on instructions of the victim who is present in Court, states that she had not communicated this fact to any other person including her family members. She complained about the acts of accused No.2 only to her husband.

6. In so far as allegations against accused No.1/husband are concerned, it appears that the details of incidents are not mentioned in the report or in the statement recorded under Section 164. Neither date or month of alleged incident are stated in the report or the details of event do not find mention in the statement recorded under Section 164.

7. Therefore, considering the circumstances of delay in filing report, absence of details of the incident and absence of communication to family members during the relevant period entitles both the applicants to relief under Section 438 of the Criminal Procedure Code, 1973. Hence, following order:

- a) In the event of arrest of the applicants in connection with C.R. No.18 of 2023 registered with Samarth Police Station, Pune under Sections 376, 376(2)(n), 377, 498-A, 406, 504, 506 and 34 of the Indian Penal Code, 1860, they be released on bail on furnishing P.R. Bond in the amount of Rs.50,000/- each with one or two sureties in the like amount;
 - b) The applicants shall remain present before the investigating officer on 10, 12 and 14 July 2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the concerned investigating officer;
 - c) The applicants shall cooperate with the investigation and make himself available for interrogation whenever required;
 - d) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
 - e) The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - f) The applicants shall, at the time of execution of the bond, furnish their addresses and mobile numbers to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
- 8.** Both the anticipatory bail applications stand disposed of in above terms.

9. In view of disposal of the anticipatory bail applications, nothing survives in the interim applications and both the interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)