

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 2321 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Hemant Mukutbihari Tiwari ...Applicant
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Pandit Kasar, for the Applicant.
Mrs. A. A. Takalkar, APP for the State/Respondent.
Mr. Lancy D'Souza, for the First Informant.
PSI N. S. Landge, Khadakpada Police Station, Thane,
present.

CORAM: N. J. JAMADAR, J.
DATED: 31st AUGUST, 2023

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the first informant.
2. This is an application for pre-arrest bail in connection with CR No.299 of 2023, registered with Khadakpada Police Station, Kalyan, for the offences punishable under Sections 354, 354D, 341, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant resides at Khadakpada alongwith her husband and a son aged 13 years and daughter 3 years. Since 2008, the first informant claimed to have known the

applicant as they were neighbours. After adverting to the various transactions and alleged acts of disorderly behaviour abuses and insult on the part of the applicant over a period of time, the first informant alleges that since the applicant did not mend his ways despite tendering apologies and again insulted and intimidated the first informant and her husband, NC complaints were lodged at Khadakpada Police Station for the offences punishable under Sections 504 and 506 of the Penal Code on 27th May, 2021 and 3rd March, 2022.

4. In the month of February, 2023, the applicant allegedly demanded a sum of Rs.4,00,000/- to Rs.5,00,000/- if the first informant desired to get rid of him. The applicant allegedly made the first informant to sell 14 Tola gold to the persons, who he had approached and got the sale proceeds of Rs.6,11,000/- transferred to his account, on line. First informant further alleged that the applicant continued to stalk and harass the first informant. The applicant threatened to kidnap her son and kill her husband. The applicant pursued her when she went to drop her daughter to school, in an inebriated state. When confronted the applicant created ruckus on the street. On 10th July, 2023, while the first informant was fetching her daughter from school, the

applicant allegedly caught hold of her from behind and inappropriately touched her and thereby outraged her modesty. Thus, the first informant lodged the report.

5. Apprehending arrest the applicant approached the Court of Session. By an order dated 4th August, 2023, the learned Additional Sessions Judge declined to exercise the discretion. Hence, this application.

6. Mr. Kasar, the learned Counsel for the applicant, submitted that a bare perusal of the first information report would indicate that the first informant had known the applicant since the year 2008 and there have been multiple transactions between the parties. Mr. Kasar further submitted that the relationship between the applicant and the first informant transcended platonic and there were financial transactions also, between the applicant and the first informant. To settle score, the first informant has lodged a false and concocted FIR.

7. In opposition to this, Mrs. Takalakar, the learned APP, submitted that the applicant does not deserve exercise of discretion and the applicant has followed a relentless course of harassment of the first informant and even threatened to eliminate the husband and cause harm to the children of the

first informant. Inviting the attention of the Court to the threats given by the applicant, post lodging of the FIR, by WhatsApp messages Mrs. Takalkar would urge that there is an eminent risk of threat to the life and limb of the first informant, her husband and children. In view of such relentless violent conduct and threats, the applicant does not deserve any relief submitted Mrs. Takalkar.

8. Mr. Lancy D'Souza, the learned Counsel for the first informant, submitted that even if the case of the applicant is taken at par that there were friendly relations between the first informant and the applicant, yet, that does not give the applicant the licence to pursue a continuous course of harassment, humiliation and violation of the person of the first informant. Mr. D'Souza laying emphasis on the repeated threats given by the applicant through WhatsApp messages urged that the first informant and her family members are in a state of perennial fear. Exercise of discretion in favour of the applicant in such circumstances will only embolden the applicant to further harass the first informant.

9. Ordinarily, in a case of this nature, where there is material to show that the victim and the applicant have been in a longstanding relationship platonic or otherwise and there

are financial dealings, the Court leans in favour of protecting the liberty of the accused person as the custodial interrogation of the accused is invariably not warranted for effective investigation.

10. Mr. Kasar is justified in advancing a submission that the longstanding relationship between the first informant and the applicant is borne out by the material on record. However, that cannot be the sole consideration while determining the entitlement to pre-arrest bail. The possibility of tampering with evidence, threatening the witnesses and causing harm to them also enters the determination.

11. I have perused the investigation papers, tendered by the learned APP. The transcript of WhatsApp chats placed on record indicates that there is *prima facie* substance in the submission on behalf of the prosecution that the applicant has been pursuing, harassing and humiliating the first informant relentlessly. The messages sent by the applicant to the first informant *prima facie* make out the offences sexual harassment punishable under Section 354A and stalking punishable under Section 354D of the Penal Code. What exacerbates the situation is the repetitive threats given by the applicant to eliminate the husband of the first informant,

the threat to disfigure the face of the first informant and also cause harm to the children of the first informant. If the messages sent by the applicant are considered as a whole, it *prima faice* becomes evident that the applicant has relentlessly and unabashedly humiliated and harassed the first informant by sexually explicit messages, character assassination, vulgar abuses and even threats to eliminate the husband of the first informant and cause harm to the first informant and her child.

12. Faced with the aforesaid situation, Mr. Kasar, the learned Counsel for the applicant, submitted that the applicant would abide by all the terms and conditions including not to enter the area in which the first informant resides. I am afraid to accede to this submission.

13. The intent and conduct of the applicant, as is evident from the WhatsApp messages, dissuades the Court from placing trust in the aforesaid course suggested by Mr. Kasar. From the perusal of the allegations in the first information report coupled with the transcript of the WhatsApp messages, I am of the firm view that there is an eminent risk of harm to the first informant and her family members, if the Court were to exercise the discretion to grant pre-arrest bail.

In a situation of this nature and imminent threat, the quantum of punishment cannot be the only criterion to determine the entitlement to pre-arrest bail. I am, therefore, not persuaded to exercise the discretion in favour of the applicant.

14. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]