

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 3309 OF 2022

Suryasen Jayavantrao Pawar ... Applicant
V/s.
 The State of Maharashtra & Anr. ... Respondents

Mr. Shailesh Kharat i/by Ms. Neelima Kharde, for the Applicant.

Ms. Trupti Khamkar, for Respondent No.2.

Mrs. Rutuja Ambekar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.134 of 2022 registered with Vishrambaug police station for offences punishable under Sections 376(2)(f), 376(2), 376(A)(B), 377, 354-A, 354-C, 324, 323, 504, 506 of the Indian Penal Code, 1860 (for short 'IPC') and under Section 3(B), 4, 5(i), (1), (m)(p), 6, 8, 12 of the Protection of Children from Sexual Offences (for short 'POCSO Act'), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. Respondent No.2/informant lodged a report alleging that she married with one Atul Kadam on 5 September, 2006. Due to matrimonial dispute, they had frequent quarrels. On 18 December 2008, they had a girl child. Thereafter they started residing separately. She filed petition for divorce in the year 2011. In 2017,

she was divorced.

3. She got acquainted with the applicant in 2010, they had leave in relationship as husband and wife for 8 years. According to report, in 2019, they married. The applicant had received Rs.3,70,000/- from the informant. According to report from September, 2016 to 2017 the applicant sexually assaulted girl child. She, therefore, lodged report on 29 August 2022. The applicant, therefore, filed application under Section 438 of Cr.P.C. before learned Sessions Judge which came to be rejected by order dated 19 October 2022.

4. This Court by order dated 28 December 2022 protected the applicant. The said protection is in forced till date.

5. Heard learned Advocate for the applicant, learned APP and learned Advocate appointed to represent the victim also perused the affidavit filed by the informant.

6. On perusal of the material on record, it appears that the applicant and informant were live-in relationship from 2010 to 2018. They married in 2019. The allegations of sexual assault against the girl child are allegedly of year 2016-2017. The first information report is lodged in August, 2022.

7. Apart from the present report, material on record indicate that another report was filed by the informant against one Sunil Gawale on 23 March 2022. It is alleged in the said report that she was having relationship with Sunil Gawale from May, 2021. The allegations of sexual assault made against the present applicant are similar to the allegations made against Sunil Gawale. The

transcript placed on record by the applicant, indicates financial dispute between the applicant and informant, threats of lodging prosecution. On overall consideration of material on record, in my opinion, the applicant has made out a case for relief under Section 438 of Cr.P.C. Therefore, custodial interrogation of the applicant is not required. Hence, following order:

- a) In the event of arrest in connection with C.R. No.134 of 2022 registered with Vishrambaug police station for offences punishable under Sections 376(2)(f), 376(2), 376(A)(B), 377, 354-A, 354-C, 324, 323, 504, 506 of IPC and under Section 3(B), 4, 5(i), (1), (m)(p), 6, 8, 12 of POCSO Act, the applicant be released on bail on furnishing P.R. bond of Rs.25,000/-, along with one or two sureties in the like amount.
- b) The applicant shall remain present before the concerned police station on 19th, 21st and 24th July, 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.
- c) The applicant 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.
- d) The applicant 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.
- e) The applicant shall, at the time of execution of the

bond, furnish his address and mobile number to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

8. The anticipatory bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)