

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3056 OF 2023

Deepak Sitaram Moghe

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Satyavrat Joshi i/b. Mr. Ashish Vernekar, for the Applicant
Smt. Ashwini Takalkar, APP, for the Respondent/State.
Mr. Debajyoti Talukdar, for the first informant.
API. Vaishali Totewar, Khadak police station.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 9, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 294 of 2023 registered at Khadak police station for the offences punishable under sections 307, 376(2)(n), 377, 392, 506(2), 504 and 323 of Indian penal Code, 1860 and sections 3 and 25 Arms Act, 1959 and section 37(1) read with 135 of Maharashtra Police Act, 1951.

3. The first informant is a Police Naik. In the month of March, 2020, the applicant who is also a police personnel, proposed to the

first informant and asked her to dissolve the marital bond with her husband. The applicant started to visit the house of the first informant. Proximity developed. First informant alleged that the applicant started to poison the mind of her husband against the first informant. The discord between the first informant and her husband escalated. While the first informant was residing at Swargate police colony, the applicant sexually exploited her by spiking her cold-drink and giving tablets. Thereafter, the applicant continued to sexually exploit the first informant by threatening to make the objectionable videos and photos viral. On account of the threats administered by the applicant to kill the husband of the first informant, the first informant allegedly filed for divorce from her husband. When she refused to pursue the matter, the applicant started physically harassing her. The applicant also assaulted the mother and 12 year old son of the first informant. On a number of occasions, the applicant threatened the first informant out of her life by pointing out a pistol. In June, 2023 the applicant allegedly robbed the first informant of her gold ornaments and valuables by pointing a pistol. Thus, the first informant lodged report.

4. Mr. Joshi, learned counsel for the applicant submitted that the allegations in the first information report are required to be

appreciated in the light of the fact that the first informant and the applicant both are police personnel. It therefore does not stand to reason that the first informant allegedly gave consent for the sexual acts on account of the threats given by the applicant. Taking the Court through the allegations in the first information report and the documents which are annexed to the application, especially the receipts evidencing transfer of the amounts by the applicant to the first informant, Mr. Joshi would urge that the case is one of relationship outside marriage, between two adults who both were in their marital bond. Emphasis was laid on the fact that the first informant obtained divorce from her husband. Therefore, the allegations of sexual exploitation are inherently improbable. The applicant thus deserves the exercise of discretion.

5. In opposition to this, Smt. Takalkar submitted that the matter cannot be looked at from the perspective of the relationship outside marriage between the applicant and the informant. It is the subsequent acts of violence and threats, for which there is ample material, dis-entitle the applicant from the relief of pre-arrest bail. Attention of the Court was invited to the statements of mother, son and colleagues of the first informant, who have stated about the violent conduct of the applicant.

6. Mr. Talukdar, learned counsel for the respondent No. 2, also resisted prayer for pre-arrest bail. It was submitted that the applicant had sent messages that he would kill the husband of the first informant if she did not agree for divorce. The applicant has also forwarded videos holding a pistol to intimidate the first informant. Release of the applicant on pre-arrest bail, in such circumstances, would further embolden the applicant and jeopardize the safety of the first informant and her relatives. It would also seriously hamper the investigation.

7. I have carefully considered the allegations in the first informant and the material tendered for the perusal of the Court.

8. Prima facie, the submissions of Mr. Joshi that it was a case of relationship between the applicant and the first informant outside marriage, appears sustainable. Whether the initial act of sexual exploitation was without consent and against the will of the first informant, would be a matter for trial. However, the long standing relationship lends heft to the submission of Mr. Joshi that the applicant and the first informant were in a relationship.

9. The entitlement to pre-arrest bail, in my view, cannot be

considered through this prism alone. Prima facie, there is material to indicate that the applicant had been extremely violent and intimidating. The statement of the first informant, her son and mother vouch for the physical harassment and intimidation to which the first informant was subjected to. Prima facie, there is also material in the form of whatsapp communication which shows that when the first informant refused to proceed with the divorce proceedings, the applicant threatened to kill her husband. Video and photographs in which the applicant is holding a pistol, were forwarded by the applicant to the first informant. Likewise, there are statements of the colleagues of the first informant who have stated about the ill-treatment meted out to the first informant by the applicant by visiting her place of work. This persistent conduct of the harassment, threat and exploitation deserves to be taken into account while considering prayer for pre-arrest bail.

10. The allegations against the applicant, who is a police personnel, appear to be grave if viewed through this prism. An initial consensual act does not give license to a man to pursue a continuous course of physical, mental and sexual exploitation. Grant of pre-arrest bail to such person would severely jeopardize the interest of effective investigation and that of the victim.

11. In the circumstances of the case, especially having regard to material on record to show that the applicant had committed criminal intimidation, the apprehension on the part of the prosecution that there is an imminent possibility of tampering with evidence and threatening the witnesses, cannot said to be unfounded.

12. It is true when the relationship turns sour, allegations fly thick and fast. However, in the case at hand, there is, prima facie, credible material in respect of the allegations of continuous course of physical, mental and sexual exploitation and intimidation of the first informant.

13. In this view of the matter, I am not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)