

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

ANTICIPATORY BAIL APPLICATION NO. 3105 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Vaibhav Sahebrao Shinde ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Prakash Pawar, for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.
Ms. Aisha Shaikh, i/b Infini Legal Solutions, for Respondent
No.2.
API G. P. Jadhav, Lonikand Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 4th NOVEMBER, 2023

ORDER:-

1. Heard Mr. Pawar, the learned Counsel for the applicant, Mr. Yadav, the learned APP and Ms. Shaikh, the learned Counsel for respondent No.2.
2. This is an application for pre-arrest bail in connection with CR No.248 of 2023, registered with Lonikand Police Station, for the offences punishable under Sections 376, 376D, 377 and 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant and respondent No.2 became acquainted with the applicant and co-accused Advocate

Vikram Bhate in connection with a FIR which was lodged against a co-employee for the offences punishable under Sections 354A and 354D of the Penal Code. Co-accused Vikram Bhate had rendered professional services without charging fees. Eventually, at the instance of Vikram, the first informant settled the dispute with co-employee.

4. The first informant alleged that co-accused Vikram had extorted an amount of Rs.14,00,000/- from the said co-employee.

5. In the month of June, 2021, the applicant and co-accused Vikram had come to her house at Wagholi, Pune. Her cold drinks were spiked. She was forced to consume the cold drinks laced with intoxicant. The applicant and co-accused allegedly took turns to have sexual intercourse with the first informant, while the other was video recording the act. The applicant and first informant allegedly had forcible sexual intercourse without her consent while she was in a state of intoxication and unable to resist. The applicant allegedly had forcible intercourse against the order of nature also.

6. After few days, the applicant and co-accused Vikram again came to her house on the pretext of tendering apology.

However, the applicant and co-accused threatened her to honey trap other persons by giving threat of making the video of the sexual acts, indulged in by them with the first informant, which they had shown her.

7. Accordingly, the first informant alleges, she initially trapped her friend 'B'. The first informant was thereafter made to lodge a complaint against 'B' with Kondhva Police. After settling the matter with 'B' and extorting money from him, the applicant and the co-accused made the first informant to withdraw the complaint against 'B'.

8. Next, the first informant was compelled to trap her friend 'A'. First informant had physical relations with 'A' in the year, 2022 and, thereafter, she was made to lodge a report against 'A' with Lonikand Police Station. The said complaint was also compromised after the applicant and co-accused Vikram extorted money from 'A'.

9. Likewise the first informant trapped 'R' and lodged report against him at Bharati Vidyapeeth Police Station, which was also subsequently compromised after the applicant and the co-accused took money from 'R'. Lastly, the first informant alleged, the applicant made her shift to a

flat above the shop of 'N' at Wagholi. She had honey trapped 'N' and they had sexual intercourse on 25th January, 2023.

10. The first informant thereafter went to her native place. After she learnt that another offence of honey trapping persons and extorting money from them was registered against co-accused Vikram, she mustered courage to lodge report.

11. The learned Counsel for the applicant submitted that there is an inordinate and unexplained delay in lodging the FIR. The first incident had allegedly occurred in the month of June, 2021. Thus, there is a delay of almost two years in lodging the FIR. Secondly, the learned Counsel would urge the first informant allegedly had physical relations with a person with whom she became acquainted in the year 2017 and have had sexual intercourse in the past, before she allegedly became acquainted with the applicant. Therefore no credence can be given to the version of the first informant. Thirdly, the conduct of the first informant in not lodging the report at the earliest possible opportunity is required to be considered in the light of the fact that the first informant has sworn affidavits proclaiming that she has no grievance whatsoever against 'A' and 'B'. In the face of the documents

which *prima facie* indicate that the first informant is unworthy of credence, the applicant deserves the exercise of discretion.

12. As against this, Mr. Yadav, the learned APP, stoutly opposed the prayer for pre-arrest bail. It was submitted that the first informant has reiterated the allegations in the FIR in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). At this stage, the veracity of the allegations cannot be tested. It was further submitted that there are statements of witnesses, who were allegedly honey trapped which lend *prima facie* support to the allegations in the FIR. The mobile phone handset in which the applicant had allegedly video recorded the acts of sexual exploitation is required to be recovered as that constitutes a vital piece of evidence. In the absence of custodial interrogation of the applicant there would be no effective investigation, urged Mr. Yadav.

13. Ms. Shaikh, the learned Counsel for respondent No.2, also opposed the prayer for pre-arrest bail. It was submitted that the co-accused Vikram was arraigned in another crime of identical nature. This Court had declined to exercise the discretion in favour of the applicant lady, who had honey

trapped the persons at the instance of co-accused Vikram. In the backdrop of the nature of the accusation and material which lends *prima facie* support to the first informant's version, the application deserves to be rejected, submitted Mr. Shaikh.

14. An affidavit-in-reply has also been filed by respondent No.2 opposing the prayer of pre-arrest bail.

15. Undoubtedly, there is delay in lodging the FIR. The acts of sexual exploitation attributed to the applicant and co-accused Vikram took place in the month of June, 2021. However, the prosecutrix's version cannot be jettisoned away on the count of delay alone. It is also true that the conduct of the prosecutrix in honey trapping the persons, allegedly at the instance of the applicant and co-accused Vikram, deserves to be properly appreciated. Whether those acts were on account of the threat administered by the applicant and co-accused and the relentless pressure allegedly exerted by them, is a matter for trial. However, at this stage, a broad view of the matter is required to be taken.

16. First and foremost, the prosecutrix has reiterated the allegations in the FIR so far as the first act of sexual exploitation, in her statement recorded under Section 164 of

the Code. The endeavour of the learned Advocate for the applicant to point out discrepancy in the flat number in which the first informant was allegedly exploited, either 302 or 304, does not merit consideration at this stage.

17. The first informant alleged that she was sexually exploited by making her consume cold drinks laced with intoxicants. In the absence of material/circumstances which render it extremely unsafe to place reliance on these allegations, normally, at this stage, the allegations cannot be thrown overboard. It is in this context, the aspect of delay and the contemporaneous conduct of the first informant become relevant.

18. *Prima facie*, there is material in the form of the statement of 'A' that in the month of June, 2022, the first informant had honey trapped him to have sexual intercourse. What he states further, *prima facie*, incriminates the applicant. 'A' states that after the said consensual sexual act the first informant lodged report against him at Lonikand Police Station. In that connection the applicant called him and asked him to pay a sum of Rs.5,00,000/- to resolve the matter as the complaint was escalated to the level of the Commissioner of Police. 'A' was called in front of the office of

the Commissioner of Police, applicant accepted Rs.5,00,000/- from him and went inside the office of Commissioner and returned with a photostat copy of the affidavit purported to have been sworn by the first informant, affirming that she had no grievance against 'A' and his family members.

19. The learned Counsel for the applicant endeavoured to explain away the statement of 'A' on the ground that the first informant already had sexual relations with 'A' in the year 2017. At this stage, the submission does not advance the cause of the applicant as the first informant as well as 'A' state that in the year 2022 the first informant again established contact with 'A'.

20. It is true, two of the alleged victims: 'B' and 'N', have stated that they never had any physical relations with the first informant. Nonetheless, the statement of 'B' reveals that the first informant had met him in the month of September, 2021 and, thereafter, lodged a report against him at Kondhwa Police Station in the month of December, 2021 and he was called thereat. 'N' stated that on 25th January, 2023 he had been to the house of the first informant to deliver the articles, which she had demanded. But he never had physical relations with her. The first informant on the contrary alleged

that 'N' had consensual sexual relations with her, on the very day i.e. 25th January, 2023.

21. In this view of the mater, *prima facie*, there is material which incriminates the applicant and co-accused Vikram. The fact that another offence of identical nature has been registered against the co-accused Vikram also deserves to be taken into account. Investigation is, therefore, warranted. Custodial interrogation of the applicant appears indispensable.

22. It is not a case where the discretion can be exercised in favour of the applicant without jeopardising the interest of effective investigation. The Investigating Officer may even look into the role of the first informant in the entire saga. However, that cannot be a ground to grant pre-arrest bail. Hence, I am not inclined to consider the prayer for pre-arrest bail.

23. 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.]