

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO. 3101 OF 2023
WITH
INTERIM APPLICATION NO.4137 OF 2023**

Rashida Hussain Tole	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Anil Joshi, for the Applicant
Mr. S.H. Yadav, APP for the Respondent/State.
Ms. Ashwini Achari, for the Intervener.

CORAM : N. J. JAMADAR, J.
DATE : NOVEMBER 8, 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. 595 of 2022 registered at Mumbra police station for the offences punishable under sections 120-B, 328, 384, 385, 392, 323, 400, 501 of Indian penal Code, 1860.
3. The first informant is a legal consultant. The co-accused Saifuddin Sariya had introduced the applicant to the first informant on the pretext of advising her for documentation, as she intended to take on lease a premises for her beauty parlor. The first informant and the applicant exchanged their cell phone numbers and there were conversations between the applicant and the first informant.

They started to share messages and photographs. Proximity developed between the applicant and the first informant.

4. On 14th March, 2022 the applicant allegedly called the first informant at her residence at Mumbra. The applicant's husband was not at home. First informant alleged, the applicant offered a juice to him mixed with some substance. He lost consciousness. After half an hour when he regained consciousness, he found himself with an underwear only. Three co-accused were in the room with the applicant. One of them was the husband of the applicant and other, brother in law, and the third a press reporter. The first informant was allegedly abused and assaulted. The co-accused Saifuddin Sariya was also called at the place of the applicant. Alleging that the first informant had indulged in objectionable acts with the applicant, the first informant was asked to pay Rs. 15 lakhs for settling the matter and thereupon they agreed to delete the video of the alleged objectionable acts. The first informant claimed to have paid a sum of Rs. 5 lakhs to co-accused Saifuddin. A sum of Rs. 5 lakhs was paid on 1st April, 2022. The applicant and her husband allegedly demanded further amount and eventually on 13th June, 2022 uploaded the objectional video on the Whatsapp group of the applicant's community. Hence, the report.

5. The learned counsel for the applicant submitted that the

applicant is in fact the victim of the circumstances. The applicant was in a relationship outside marriage with the first informant. As they were found together by the husband of the applicant, the first informant was assaulted by applicant's husband and thereupon the first informant has lodged a false report implicating the applicant as well. It was submitted that there is an inordinate delay in lodging the first information report. Attention of the Court was invited to a transcript of the conversation between the first informant, applicant, her husband and brother in law and co-accused Saifuddin.

6. The learned APP, on the other hand, submitted that the applicant was very much a part of the conspiracy to extort money from the first informant. This Court has rejected the prayer for pre-arrest bail of Saifuddin by an order dated 1st March, 2023. The Supreme Court has also dismissed the Special Leave Petition preferred by Saifuddin by an order dated 4th October, 2023.

7. I have perused the order passed by this Court on 1st March, 2023 in ABA No. 385 of 2023. This Court has, inter alia, observed as under:-

5] The applicant is the one who introduced the complainant to the accused No.2. The accused No.2 and other accused took embarrassing photographs of

the complainant which were used for blackmailing him. The applicant was the one who made the demand. The money was collected by the applicant. These pictures of the complainant were forwarded to the complainant's wife. The complainant's wife confronted him with the photographs. It was then that the complainant told his wife the entire story and lodged the FIR. The accusations against the applicant are serious. His complicity in the offence is evident from the accusations.

6] The investigation reveals that the applicant was in contact with accused Nos.2, 3 and 5 on the date of the incident. Accused Nos.3 and 4 are yet to be arrested. There are call details on record which indicate the applicant's presence in Mumbra on the date of the incident.

7] Considering the gravity of the accusations, the application is rejected.

8. The material on record prima facie indicates that the applicant had called the first informant at her place. After a while, the applicant was found in an embarrassing position. The co-

accused allegedly abused and assaulted the applicant. Even the transcript of the conversation on which reliance was placed by the applicant, indicates that the first informant was found in a disrobed state.

9. In the backdrop of the material on record, the submission on behalf of the applicant that the applicant is the victim of the circumstances, appears to be a matter of defence to be tested at the trial. The reasons which weighed with this Court in declining to exercise the discretion in favour of Saifuddin, a fortiori apply to the applicant. Custodial interrogation of the applicant is indispensable for a complete and effective investigation. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] In view of rejection of the application, Interim Application also stands disposed.
- 3] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)