

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3280 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Samir Ibrahim Sayyed ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Azimuddin Kazi, a/w Rizwan Khan, i/b N. N. Kazi &
Asso., for the Applicant.

Ms. Anamika Malhotra, APP for the State/Respondent.

PSI Suvarna Pawar, Marketyard Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 28th NOVEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection with CR No.145 of 2023, registered with Marketyard Police Station, Pune City, for the offences punishable under Sections 498-A, 323, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code") and Section 66E and 67 of the Information Technology Act, 2000.

3. The first informant is the wife of the applicant. Their marriage was solemnized on 6th April, 2019. The first informant has a daughter by her first marriage. The first

informant and the applicant were blessed with a daughter in the month of March, 2021.

4. The first informant alleged that the applicant subjected her to physical and mental cruelty. The applicant had induced the first informant and her mother to part with amounts to meet the expenses. It is further alleged that the applicant had uploaded the nude photographs of the first informant on the Facebook page and thereby defamed her.

5. The learned Counsel for the applicant submitted that the offences punishable under Information Technology Act, 2000 are bailable. The Facebook account was jointly operated by the applicant and the first informant. The investigating agency has yet not obtained information from the Facebook Company with regard to the uploading of the alleged photographs.

6. The learned APP resisted the prayer for pre-arrest bail on the ground that the applicant has not appeared before the Investigating Officer despite notice under Section 41A of the Code of Criminal Procedure and cooperated with the Investigating Officer.

7. I have perused the allegations in the FIR. It seems that the genesis of the offences is in the matrimonial discord. In the FIR the first informant claimed that she had been residing separately from the applicant at her parental home since one and half year prior to lodging of the report. The allegations of uploading the nude photographs pertain to the year 2019 and 2020. In the backdrop of the nature of the accusation, the custodial interrogation of the applicant does not seem to be warranted to facilitate further investigation into the offences which arose primarily out of a matrimonial dispute. Having regard to the time-lag and the delay in the context of the allegations of uploading of nude photographs, the authorship of which is still under investigation, I am inclined to exercise the discretion in favour of the applicant while directing him to join in the investigation.

8. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.145 of 2023, registered with Marketyard Police Station, Pune City, the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

- (ii) The applicant shall cooperate with the investigation and attend Marketyard Police Station on 4th, 5th and 6th December, 2023 in between 10.00 am. to 1.00 pm.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (iv) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]