

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4244 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 1233 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Mahesh Menon ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Shaheen Kapadia, i/b Gaurav Shukla, for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 14th DECEMBER, 2023

PC:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. By virtue of this application, the applicant, who is arraigned in CR No.1447 of 2022 registered with Samatanagar Police Station, Mumbai, for the offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code, 1860 ("the Penal Code") and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO"), seeks a protection to allow him to collect his personal belongings from his residential premises and also direct the jurisdictional police to properly assist the applicant

in collecting the personal belongings by allowing the applicant to enter into his residential premises, conduct search thereat and also have video recording of the said process. It is also prayed that the first informant be directed to pay Rs.30,00,000/- by way of compensation in case of any loss or damage to the personal belongings of the applicant.

3. The application is preferred on the premises that while granting interim protection, this Court had verbally directed the Police Officer to allow the applicant to collect the belongings of the applicant, which were in his residential house.

4. *Prima facie* it appears that there is a matrimonial dispute between the applicant and the first informant. A proceeding under Domestic Violence Act has been initiated by the first informant. While releasing the applicant on bail, this Court had, *inter alia*, noted that the applicant was initially prosecuted for the offences punishable under Sections 498A and 377 of the Penal Code and the subject FIR was lodged after the applicant was granted bail in the said crime.

5. In the aforesaid backdrop, the prayers in the instant application cannot be entertained in an application for pre-

arrest bail. Inevitably disputed questions of facts would arise, which may be beyond the remit of jurisdiction under Section 438 of the Code. Such questions can be legitimately raised in proceedings which afford adjudication of disputed questions of facts. Therefore, it may not be expedient to entertain this application. However, the applicant will have the liberty to institute an appropriate proceeding before appropriate forum to work out his remedies. With the aforesaid liberty, the application stands disposed.

6. ABA/1233/2023 stand over to 18th January, 2024.

[N. J. JAMADAR, J.]