

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 3369 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.12.07
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1. Suraj Satyaprakash Tiwari
2. Vivek Satyaprakash Tiwari
3. Aman Lalsahab Tiwari

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr. Milan Desai, i/b T. R. Patel, for the Applicant.

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

PSI Shyamkant Nighot, Malvani Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED : 4th DECEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection with CR No.1724 of 2022 (re-numbered as CR No.1333 of 2022), registered with Malwani Police Station, Mumbai, for the offences punishable under Sections 354, 323, 324, 427, 452 and 504 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"). Subsequently, an offence punishable under Section 376 of the Penal Code, seems to have been added.

3. The first informant lodged a report with the allegations that on 29th November, 2022 at about 7.00 pm., the applicants

came before her house and abused the first informant and her husband on the count that they were the holders of the premises where the first informant was residing. When the first informant remonstrated, the applicants allegedly chased her into her home. When her husband tried to resist the applicants, he was assaulted. The applicants allegedly used criminal force to the first informant and thereby outraged her modesty. Report came to be lodged on 5th December, 2022.

4. The learned Counsel for the applicants submitted that subsequently statement of the first informant came to be recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (“the Code”) in which the first informant alleged that she was dragged out of her home, applicant Suraj attempted to disrobe her and applicant Aman attempted to molest her and inserted a wooden stick into her private part. Subsequently, a further statement came to be recorded in which the first informant had further improved her version to allege that she was completely disrobed and sexually exploited and her husband was also assaulted.

5. It appears that in respect of very same occurrence initial NC was recorded at CR No.5094 of 2022 for the offences punishable under Sections 323, 504 and 506 of the Penal Code

only. In the FIR, which was initially numbered as CR No.1724 of 2022, it seems the allegations of use of criminal force with intent to outrage the modesty of the first informant were made. In the statement recorded under Section 164 of the Code, on 21st September, 2023, the first informant made the allegation that the applicant No.3 Aman Tiwari had inserted a stick in her private part. *Prima facie*, there is a substantial delay in making the said allegation. Moreover, when the first informant was examined on 30th November, 2022, no such history was narrated by the first informant. Nor any external injury was found on the person of the first informant. The submission on behalf of the applicants that the first informant has further improved her version so as to make grave allegation that she was completely disrobed by dragging her out of her home, *prima facie* appears to carry substance. The incident has allegedly occurred in front of the house of the first informant. I have perused the statements of the alleged eye witnesses. *Prima facie*, the witnesses to the alleged occurrence have not subscribed to such version of the first informant.

6. In the aforesaid view of the matter, a *prima faice* case for the exercise of discretion in favour of the applicants is made out. I am, therefore, inclined to allow the application.

7. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicants in CR No.1724 of 2022 (re-numbered as CR No.1333 of 2022), registered with Malwani Police Station, Mumbai, the applicants 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, each.
- (ii) The applicants shall cooperate with the investigation and attend Malwani Police Station on 11th 12th and 13th December, 2023 in between 10.00 am. to 1.00 pm. and, thereafter, as and when directed.
- (iii) The applicants 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.]