

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

ANTICIPATORY BAIL APPLICATION NO. 3526 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Sidhesh Rushikesh Bhalerao ...Applicant
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Ganesh Gole, i/b Bhavin Jain, for the Applicant.
Ms. Anamika Malhotra, APP for the State/Respondent.
PSI Vidya Lande, Manpada Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 15th DECEMBER, 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.682 of 2023, registered with Manpada Police Station, Thane, for an offence punishable under Section 376 of the Indian Penal Code, 1860 ("the Penal Code").
3. The first informant had known the applicant as the latter is friend of her brother. The first informant and applicant started chatting on Instagram. On 7th September, 2023, the applicant took the first informant to Hotel Bombay Velvet for dinner. They had beer. The applicant allegedly made the first informant to have tequila shots.

4. The first informant alleged at about 10.30 pm. she was not in her senses. On the next morning, she found herself in a room at a lodge at Sangarli. She was completely disrobed. The applicant was with her. The first informant realized that she was violated. Upon being confronted, the applicant did not give proper answers and stated that as she was drunk, he had brought her to the lodge. She narrated the incident to her parents. They went to the house of the applicant and apprised the parents of the applicant and, thereafter, first informant lodged the report.

5. Mr. Gole, the learned Counsel for the applicant, submitted that there is no material to show that the applicant had committed sexual intercourse. The first informant simply alleged that she felt that she was sexually exploited. Mr. Gole would further submit that the FIR was lodged after consulting an Advocate. The only material, which incriminates the applicant, according to Mr. Gole, is the fact that the applicant had suppressed his real identity and furnished the identity card of another person. However, that cannot be a ground to deprive the personal liberty of the applicant, submitted Mr. Gole.

6. The learned APP, on the other hand, submitted that there is overwhelming material to show that the applicant had taken the first informant to the lodge. The Manager and the room boy of the lodge have stated that the first informant was not in complete control of herself. Moreover, the first informant had immediately reported the matter to police and the medical evidence corroborates her version.

7. Mr. Gole submitted that in the history narrated by the victim before the Medical Officer, she had claimed that she had known the applicant since three to four years. There were no injury marks suggestive of sexual intercourse, submitted Mr. Gole.

8. I am afraid to accede to the submissions of Mr. Gole. *Prima facie* there is ample material to show that on the night of occurrence the applicant took the first informant to the lodge. The applicant had suppressed his real identity. He had used documents of another person. The room boy at the lodge had stated both the boy and the girl were drunk. The gait of the girl was unsteady. As the girl felt like vomiting, he had given them a room. Moreover, the presence of the applicant and the first informant at the lodge is captured in the CCTV footages.

9. In the aforesaid view of the matter, I find substance in the submission of the learned APP that the version of the prosecutrix cannot be discarded at this stage. The first informant lodged FIR almost instantaneously. She was medically examined on the very day. She narrated the history. The Medical Officer opined that the evidence of sexual intercourse/assault cannot be ruled out.

10. In the aforesaid view of the matter, I am persuaded to hold that a strong *prima facie* case is made out against the applicant. Therefore, I am not inclined to exercise the discretion in favour of the applicant.

11. 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.]