

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.330 OF 2023

Patru s/o Devrav Jambhule

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station, Umred,
District Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. N. Jaiswal, Counsel for applicant.
Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/06/2023

1. The present application is filed by the applicant for grant of anticipatory bail in connection with Crime No.722/2022 registered with Police Station, Umred for the offence punishable under Sections 376(2)(n), 354, 354-D, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police as crime is registered against him under Section 376(2)(n) on an allegation that on 17.12.2022 the victim girl's supplementary statement was recorded wherein she has disclosed that present applicant has subjected her for forcible sexual assault. Initially, she had filed the report however, she was threatened by the applicant that if she lodges any report against him, he will exhibit the video in social media and make it viral.

She alleged that the present applicant subjected her for sexual assault and prepared the video of the said incident and threatened her and therefore, she has not initially disclosed the said incident to anybody. On the basis of the statement, the additional Section 376(2)(n) was added.

3. As per the contention of the applicant initially the crime was registered on the basis of report lodged by the victim who is a married lady on an allegation that present applicant is her brother-in-law. On 13.12.2022 he came to her house outraged her modesty by physically touching her and also assaulted her husband. On the basis of said report, police have registered the offence punishable under Sections 354, 354-D, 323, 504 and 506 read with Section 34 of the Indian Penal Code. The applicant was released on bail in the said crime. Subsequently after thought she made allegation regarding the sexual assault. The said allegations are supported by any material. Only to implicate the present applicant in the serious offences, these allegations are made. Now investigation is completed and charge-sheet is filed, hence, custody is not required and hence he be released on anticipatory bail in the event of his arrest.

4. The said application is strongly opposed by the State on the ground that the alleged offence is of

serious nature. Initially, she has not narrated the said incident as she was threatened by saying that he has prepared the video of the incident of sexual assault and he will make it viral on a social media. As the victim was under apprehension of social stigma, she has not narrated the said incident and while lodging the FIR though she narrated the said incident however, the Investigating Officer has not recorded the said information, according to her. It is further contention of the State considering the gravity of the offence, custodial interrogation of the present applicant regarding the alleged incident is required. Hence, bail application deserves to be rejected.

5. Heard learned Counsel Shri Jaiswal for the applicant. He submitted that initially the informant has not narrated about the alleged incident. In fact the present applicant is implicated due to the previous enmity. The applicant is brother-in-law of the victim. The incident narrated by her itself improbable and unacceptable. Considering the victim is a married girl. Medical evidence is not helpful to the prosecution to frame the charges against the present applicant for the offence punishable under Section 376(2)(n). He further submitted that now investigation is completed and charge-sheet is filed. Merely because the applicant is released on bail and to implicate him in a serious offence these false allegations are made by the victim girl.

Therefore, applicant be protected by granting anticipatory bail.

6. Learned APP reiterated the contention and submitted that the statement of the victim under Section 164 of the Cr. P.C. was recorded by the Magistrate. Before the Magistrate also she has narrated about the incident that from last so many days the applicant was following her and thereby committed the offence of stalking. She further alleged that he threaten her if she has not develop relations with him then he will kill her husband. In perusal of the said statement, the husband of the victim was assaulted on 13.12.2022. He has sustained the injury. His injury certificate is also on record. Thus, prima facie material is sufficient to show that there is sufficient material against the present applicant to connect him with the alleged offence. He further submitted that at this stage the statement of the victim that she was sexually assaulted by the present applicant is sufficient to show the involvement. It is well settled that the statement of the victim which inspires the confidence is sufficient to prove the charges against the present applicant. Hence, the bail application deserves to be rejected.

7. Having heard both the sides and on perusal of the recitals of the FIR, FIR is lodged on the basis of report lodged by victim on 13.12.2022. In the said

report she has narrated that on 13.12.2022 at about 9.30 a.m. when she was in agriculture field the present applicant approached to her and hold her hands and outraged her modesty. He was insisting her to have a love relationship with him. Admittedly, in the First Informant Report she has not narrated about the sexual assault on her. Subsequently, her supplementary statement is recorded by the Investigating Officer, wherein she has explained that initially she has not narrated the incident to the police, as she was threatened by the present applicant that he will made the video clip viral as she was under apprehension that if the video clip made viral then there would be social stigma on her and therefore, she has not alleged against the sexual assault. She further explained that on 13.12.2022 when she approached to the police she had narrated the said incident to the police, the police have not recorded the same. In her statement under Section 164 of the Cr.P.C. also, she has specifically alleged that on 13.12.2022 when she approached to the Umred Police Station to lodge the FIR she has narrated the alleged incident, but the Investigating Officer told her she should narrate about the incident which happened recently and he has not recorded the said incident. By taking cognizance of the said statement, police have added Section 376(2)(n) of the Indian Penal Code. During investigation, victim girl was also referred for the medical examination. Considering the victim is a married lady. No material is

reflected during her medical examination. No external injuries were found on her person. Investigating Officer has also recorded the statement of the relevant witnesses including the statement of her husband. Her husband has also supported the contention that victim girl was subjected for sexual assault. He further stated that he was also assaulted by the present applicant and this contention is supported by the medical report. The statements of the witnesses namely, Dilip Vinayak Kubale and others also states that the victim has disclosed to them that present applicant used to follow her and outraged her modesty. Thus, from the investigation papers the sole statement of the victim and the statements of the other witnesses discloses the *prima facie* involvement of the present applicant in the alleged offence. While considering the bail application, the considerations for the regular bail are taking into consideration, the offence is against the woman anti social in nature. The severity of the offence is to be taken into consideration. The offence which is punishable with the imprisonment up to ten years and which may extend up to the life imprisonment. Considering the allegations made by the victim and at this stage no reason came forward before the Court regarding the false implication of the present applicant. *Prima facie* material and the statement of the witnesses are to be taken into consideration which shows the involvement of the present applicant with the alleged

offence. Considering the *prima facie* material revealed against the present applicant to connect with the alleged offence. The application for anticipatory bail deserves to be rejected. Accordingly, I proceed to pass following order.

8. The application is hereby rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate