

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

CRIMINAL APPLICATION (ABA) NO. 409 OF 2023

Abdul Raheman Abdul Rahim

Vs.

The State of Maharashtra Through Police Station Officer, Police Station, Akot City,
District Akola and another

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel for applicant.
Mr. A. M. Kadukar, APP for respondent No.1/State.
C. A. Babrekar, Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 14/07/2023

1. The present application is for grant of anticipatory bail in the event of arrest, in connection with Crime No.192/2023 registered with Police Station, Akot City, District Akola for the offence punishable under Sections 376(2)(f), 354-A and 506 read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.

2. The applicant is apprehending arrest at the hands of police as the crime is registered on the basis of report lodged by the sister-in-law of the present applicant. As per the allegation in the FIR, the informant got married with the brother of the present applicant

namely Mohd. Irfan Abdul Rahim. After marriage, she resumed cohabitation at the house of the present applicant, her husband and other family members. Therefore, no physical relationship between her and her husband. But, the present applicant who is her brother-in-law used to harass her physically by entering into her bed room whenever she is alone. It is further alleged that he used to stare at her, used to touch her inappropriately and on 03.12.2022, when she was alone sleeping in the bedroom, he came inside the bedroom and subjected her for sexual assault forcefully. On the basis of said report, police have registered the offence against the present applicant.

3. As per the contention of the present applicant, this FIR is lodged out of the matrimonial dispute. In fact, no such incident has occurred. The victim has left the matrimonial house on 04.12.2022 and the report was filed on 15.12.2022. In the initial report, there was only an allegation regarding the matrimonial dispute and ill-treatment at the hands of the present applicant and other family members. In the said report, she has not alleged that she was subjected for sexual assault by the present applicant. Even her statements are recorded by the Police Officers who are in-charge of the Women's Cell at the Police Station. Before the said Women's Cell, she has not made any allegation regarding the sexual assault by the present applicant. Subsequently,

she filed an application under Section 156(3) of Cr. P.C. wherein these allegations are levelled against the present applicant on the basis of directions by the Judicial Magistrate First Class, the crime is registered under Section 376(2)(f) of the Indian Penal Code. The crime is registered on the basis of false and baseless allegations. The present applicant is a Teacher by profession, if he is arrested, his entire reputation would harm and therefore, he be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State as well as the respondent No.2 – victim on the ground that there is *prima facie* material against the present applicant to show that he has subjected the victim for sexual assault. The investigation is yet to be completed. His custodial interrogation is required for the investigation purpose. It is further contention that the Investigating Officer has collected the material which shows that the specific role of the present applicant requires to be investigated and therefore, the custodial investigation is required. The offence is of serious nature. The applicant has not cooperated with the investigating agency and avoiding the arrest. The samples of the applicant are required to be obtained to complete the chain of investigation. The present applicant is close relative of the other co-accused and associated with the husband of the victim and if he is released on bail, he may tamper with the prosecution

witnesses and pressurizing them and prays for rejection of the application.

5. The respondent No.2 – victim also reiterated the same contention and now objected the application with apprehension that if applicant is released on bail, he will tamper the prosecution evidence and will hamper the investigation.

6. Heard learned Counsel Mr. Sirpurkar for the applicant. He reiterated the contention and invited my attention towards the initial report filed by the victim wherein she has not alleged regarding the sexual assault on her. He further submitted that the police officers of Women's Cell have also recorded the statement on 15.12.2022 wherein also she has not alleged regarding the sexual assault on her by the present applicant. They have also maintained the day-to-day proceeding regarding the said complain, but it appears that she nowhere complaint about the sexual assault on her before them. Subsequently, afterthought, the application under Section 156(3) of Cr.PC. is filed with the false and baseless allegations. The applicant is a Teacher by profession, if he is arrested his entire reputation would be affected and therefore, he be protected by granting anticipatory bail.

7. The learned APP and learned Counsel for respondent No.2 strongly opposed the application by inviting my attention towards the recitals of the FIR and investigation papers and submitted that there is a *prima facie* material against the present applicant. The informant has narrated the alleged incident and role of the present applicant, his biological sample needs to be obtained and therefore, his custodial interrogation is required. Hence, the bail application deserves to be rejected.

8. After hearing both the sides and on perusal of the investigation papers, admittedly, the informant is the sister-in-law of the present applicant. The marriage between the brother of the present applicant and the informant is not disputed. It is also not disputed that the informant was residing along with her husband and present applicant along with other family members in a joint family. The present applicant was also residing in the same house along with his wife and children. From the investigation papers, it further reveals that initially, on 15.12.2022, she has filed report before the police alleging that she is ill-treated and harassed by the present applicant, her husband and other family members. In the said initial FIR, though she has alleged that present applicant is having ill-intention about her and used to stare at her, but she has not alleged that she was subjected for sexual assault by the present applicant.

By taking cognizance of this complaint, the matter was referred to the Women's Cell. The statement of the victim was recorded by the Police Officers and Women's Cell wherein also she has not alleged that she was subjected for a sexual assault by the present applicant. As per the contention of the learned Counsel for the victim that she has filed the complaint at the Police Station, however, the police have not taken cognizance and therefore, she approached to the Court by filing an application under Section 156(3) of Cr. P. C. Perused the application filed under Section 156(3) of Cr.P.C., wherein also she has not explained why she has not mentioned about the sexual assault at the initial stage and there is no explanation regarding the non-disclosure of the alleged incident in the application under Section 156(3) of Cr. P. C. After registration of the FIR, her statement was recorded. In the said statement also, she has not explained why the alleged incident was not narrated by her when she has lodged the initial complaint. Thus, from the investigation papers also, it reveals that the allegation which is made in the application under Section 156(3) of Cr.P.C. is not reflected in initial complaint nor in the statement and there is no explanation to that effect. As per the allegation, admittedly, the alleged incident has taken place 03.12.2022. Now, the investigating agency is required his custody for obtaining the samples and for custodial interrogation. As far as obtaining the samples is

concerned, his physical custody is not required and the samples can be obtained by the Investigating Officer by giving direction to the present applicant to remain present for the medical examination. As far as the custodial interrogation is concerned, the directions can be given to the present applicant by imposing certain conditions.

9. The applicant has referred Criminal Application (APL) No.908/2023 Abdul Rahman Abdul Rahim and others Vs. State of Maharashtra and another, dated 12/07/2023, for quashing of the FIR wherein also the Division Bench of this Court has observed that she has lodged a report with the Police Station, Gadgenagar on 15.12.2022, wherein she never alleged about the commission of the offence of rape. Later on, these allegations are made by the victim.

10. Considering the entire facts and circumstances, the custodial interrogation of the present applicant is not at all required. As far as obtaining the samples and interrogation is concerned, certain conditions can be imposed to the applicant. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant namely, **Abdul Raheman Abdul Rahim** is released on anticipatory bail in the event of arrest, in connection with Crime No.192/2023 registered with Police Station, Akot City, District Akola, for the offence punishable under Sections 376(2)(f), 354-A and 506 read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, on execution of P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. till the completion of the investigation and shall make him available for obtaining the biological samples and he shall also make himself available for the interrogation purpose as and when required by the Investigation Officer besides his attendance or in addition to that attendance.

(iv) The applicant shall furnish his cell phone number and address with the address proof.

(v) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)