



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1000 OF 2023

Shakilabi W/o Raju Pathan And Another

VERSUS

The Superintendent Of Police Another

...

Mr. V. S. Wakale, Advocate for Applicants

Mr. S. B. Pulkundwar, APP for Respondent Nos. 1 and 2/State

Mr. N. D. Jaiswal, Advocate for Respondent No. 3

AND

ANTICIPATORY BAIL APPLICATION NO. 1026 OF 2023

Arbaj S/o Mohammad Pathan

VERSUS

The State Of Maharashtra And Others

...

Mr. S. S. Shaikh, Advocate for Applicant

Mr. S. B. Pulkundwar, APP for Respondents

Mr. N. D. Jaiswal, Advocate for Respondent No. 3

AND

ANTICIPATORY BAIL APPLICATION NO. 1107 OF 2023

Sakeb Salim Shaikh

VERSUS

The Superintendent Of Police, Aurangabad And Others

...

Mr. V. S. Wakale, Advocate for Applicant

Mr. S. B. Pulkundwar, APP for Respondents

Mr. N. D. Jaiswal, Advocate for Respondent No. 3

AND

ANTICIPATORY BAIL APPLICATION NO. 1314 OF 2023

Raju Hojdar Pathan

VERSUS

The Superintendent Of Police And Other

...

Mr. V. S. Wakale, Advocate for Applicant

Mr. S. B. Pulkundwar, APP for Respondents
Mr. Mukesh Rupanwad, Advocate for Respondent No. 3

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CORAM : R.M. JOSHI, J
DATE : JULY 01, 2024

COMMON ORDER :

1. Applicants are apprehending arrest in connection with Crime Nos. 122 of 2023 and 135 of 2023 registered with Bidkin Police Station for the offences punishable under Sections 376, 452, 354, 354-A, 354-B, 324, 323, 504, 506, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code and Section 8, 12 & 17 of the Protection of Children from Sexual Offences Act.

2. Learned Counsels for the Applicants submit that there are inconsistencies in the statement of informant while recording both first information reports as well as supplementary statement. According to them, the informant has suppressed the vital facts while recording the alleged crimes to the police by not disclosing the relationship between her and accused Raju. They claim that there are material improvements in statement of informant as while recording First Information Report in Crime No. 122, no allegation was

made attracting offence of rape, however, by way of improvement later on said offence was added. It is also argued that it is not possible for any person to state in First Information Report about revolver being used for threatening and committing offence but belatedly such theory is introduced. Thus, according to them, the statement of informant and victim are not reliable. It is also claimed that in fact one of accused was assaulted by brother of informant and these reports are lodged by way of counterblast. It is submitted that investigation is complete and charge-sheet has been filed in both crimes. It is thus their contention that it not the case wherein custodial interrogation of the Applicants is necessary.

3. Learned Counsels for Informant and APP opposed the said submissions. It is their contention that there is every possibility that while lodging FIR informant may miss certain vital aspects which are recorded in supplementary statement. It is further submitted that there is also statement of minor girl who also supports the allegations made by the Informant. Thus, having regard to the nature of allegations, it is not a fit

case for grant of anticipatory bail.

4. Learned Counsels for Applicants have brought to the notice of this Court photographs of the Informant and one of the accused persons on the basis of which there is *prima faice* reason to believe that they were in close relationship. The first informant at no point of time disclosed the said fact to the police. Thus, contention of learned Counsel for Applicants that the possibility of false implication owing to the relationship between the parties going sore cannot be ruled out.

5. It is also seen from the first information reports that in the first information report and supplementary statement material variance has been seen in the statement of the informant. *Prima facie* it is thus clear that the informant has recorded supplementary statement in order to aggravate the crime in question. In Crime No. 122 of 2023 the first information report came to be lodged alleging offence under Sections 354 and 452 of IPC whereas in supplementary statement the offence sought to be invoked is under Section 376 of IPC. This Court does

not find any justification for not incorporating the alleged act of commission of rape by the accused against the informant in the FIR. In such circumstances, there is no reason to discard the statement made on behalf of the Applicants that the said FIR in Crime No. 122/2023 could be by way of false implication.

6. As far as the Crime No. 135/2023 is concerned, FIR does not state the name of the persons who have entered the house of the informant, however, in the supplementary statement almost all male family members of one of the accused are sought to be implicated. Merely because, the minor girl makes statement in support of informant, the same cannot be treated as gospel truth at this stage owing to material discrepancies in case of informant. Similarly in view of the fact that the informant sought to improvise her statement by stating that Applicant came to her house with desi revolver. It is absolutely not possible if a person comes with revolver and threatens and informant misses such vital fact while disclosing the incident to the police.

7. Having regard to the inconsistent statements made by the informant in both reports and as the possibility of false implication is not ruled, these Applicants have made out the case for protecting their liberty. It is also necessary to note that the charge-sheet has been filed in both crimes, as such, custodial interrogation of the Applicants is not called for.

8. In view of the above, applications are allowed by confirming interim orders dated 28.06.2023, 10.08.2023 & 11.07.2023.

(R. M. JOSHI, J.)

Malani