

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2954 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Imran Vasim Khan ...Applicant
Versus
State of Maharashtra and ors. ...Respondents

Ms. Dharini Nagda, a/w Mahesh Vaswani, Shreya Tiwari,
Lakshita Fatnani and Rajesh Ranglani, for the
Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent No.1.

Ms. Anubha Rastogi, a/w Rachita Padwal and Aditya Joshi,
for Respondent No.3.

PSI Madan Waghmare, Nirmal Nagar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 5th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant, the learned
APP and the learned Counsel for respondent No.3.

2. The learned Counsel for respondent No.3 seeks leave to
tender an affidavit-in-reply on behalf of respondent No.3.

Leave granted.

Affidavit-in-reply is taken on record.

3. By an order dated 23rd October, 2023, this Court had
granted interim bail by ascribing reasons. The learned Counsel
for the applicant submits that, in the intervening period, post

completion of investigation, charge-sheet has been lodged. The applicant had cooperated with the investigation.

4. The learned APP and the learned Counsel for respondent No.3 concurred with the said submission.

5. On 23rd October, 2023, this Court had considered the allegations against the applicant and was persuaded to grant the interim protection observing *inter alia* as under:

“5. The first informant alleged that her marriage was solemnized with the applicant on 24th July, 2023. On 8th August, 2023 she was called by the parents and other family members of the applicant, to their home at Bandra. The applicant's family members opposed the marriage of the applicant with the first informant. On 9th August, 2023, by mutual consent, the marriage was dissolved by executing a Khulanama. The first informant further alleged that the applicant again contacted her and facilitated her to take on rent a room at Govandi. The applicant visited her at the said room and had forcible sexual intercourse with her, during the period 3rd September, 2023 to 6th September, 2023, by falsely representing that he would again solemnize marriage with her.

6. In the further statement, it seems, the first informant alleged that on 8th August, 2023 when she had been to the house of the applicant, the sister of the applicant forcibly administered 4-5 pills to her and that led to miscarriage.

7. Prima facie, the allegations of causing miscarriage were such that they ought to have made in the first information report which came to be lodged on 30th September, 2023. The first information report specifically adverted to the fact that on 8th August, 2023 she had gone to the house of the applicant and, thus, the omission to make those allegations in the first information report, bears upon the veracity of the allegations of the first informant, even at this nascent stage.

8. As regards the allegations of sexual intercourse, during the period 3rd September, 2023 to 6th September, 2023, post dissolution of marriage, the applicant has a counter version in the sense that, after the marriage, it

transpired that the first informant was pregnant by three months when the medical examination was carried out on 7th August, 2023 and, thereafter, the marriage came to be dissolved.

9. In the backdrop of the nature of the accusation and the attendant circumstances, especially admitted position that the marriage was dissolved by Khulanama, the aspect as to whether the first informant gave consent for sexual intercourse under misconception of facts, warrants consideration and that makes out a prima facie case to grant interim protection. I am, therefore, inclined to protect the liberty of the applicant while directing him to join in the investigation.”

6. The learned Counsel for respondent No.3 submitted that the allegations were made by the first informant at the earliest point of time. However, the concerned Police Officer had not recorded the same and, therefore, the first informant was required to move the superior authority.

7. As regards the allegations of sexual exploitation after the dissolution of marriage, suffice to note this Court had delved into those allegations and found that a case for protection from arrest was made out.

8. At this stage, when the investigation is complete and charge-sheet has been lodged, the aforesaid reasons which weighed with this Court in granting protection apply with more force. I am, therefore, inclined to hold that the order of interim bail is required to be made absolute.

9. Hence, the following order:

: O R D E R :

- (i) Order of interim bail dated 23rd October, 2023 is made absolute in the terms and conditions incorporated therein.
- (ii) In addition, the applicant shall regularly attend the proceedings before the jurisdictional court.

Application stands disposed.

[N. J. JAMADAR, J.]