

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

ANTICIPATORY BAIL APPLICATION NO. 3082 OF 2023

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Sanjay Tukaram Gujar ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2937 OF 2023**

Vishal Suryakant Malvankar ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Harshad Bhadbhade, a/w Nikita Mandaniyan, for the
Applicant in ABA/3082/2023.
Dr. Uday Warunjikar, a/w Sonali Chavan, for the Applicant
in ABA/2937/2023.
Mr. Prashant Jadhav, APP for the State/Respondent No.1.
Mr. Dilip Shinde, a/w Rahul Shinde, for the Complainant.
API P. S. Sable, MFC Police Station, Kalyan.

**CORAM: N. J. JAMADAR, J.
DATED: 6th MAY, 2024**

ORDER:-

1. Heard the learned Counsel for the applicants in both ABAs, the learned APP for the State and the learned Counsel for respondent No.2.

2. These applications are for pre-arrest bail in connection with CR No.483 of 2023, registered at Mahatma Phule Chowk Police Station, Thane for the offences punishable under Sections 363, 366, 376, 377, 376D and 506 of Indian Penal

Code, 1860 (“the Penal Code”) and Section 25 read with Section 3 of the Arms Act, 1959.

3. When ABA/2937 of 2023 was first listed before the Court on 20th October, 2023, this Court was persuaded to grant interim bail to the applicant by recording reasons.

4. Mr. Warunjikar, the learned Counsel for the applicant, submits that pursuant to the said order the applicant – accused No.1 has appeared before the Investigating Officer and cooperated with the investigation. The applicant had handed over the mobile phone handset and the vehicle which was allegedly used in the commission of the offence. The learned Magistrate has, thereafter, returned the vehicle to the applicant (A1).

5. In view of the aforesaid order, Sanjay Gujar (A2) the applicant in ABA/3082/2023 was granted interim bail by an order dated 1st November, 2023. The learned Counsel for the applicant Sanjay Gujar (A2) submitted that the applicant has been falsely roped in for being the legal advisor to Vishal Malvankar (A1). It was submitted that a common thread which runs through the various complaints made by the first informant is that there is a business rivalry between Mr. Kate, the maternal uncle of the first informant, and Vishal

Malvankar (A1) and the first informant has been used as a tool to wreck vengeance.

6. The learned APP submitted that two of the witnesses to whom the first informant makes a reference in the FIR have stated that somebody identifying himself as Vishal Malvankar had called them and asked them to send the victim to him, lest the videos would be made viral.

7. The learned Counsel for the victim submitted that there was delay in lodging the report on account of the threats given by the applicants. The learned Counsel for the victim further submitted that during the pendency of these applications an unknown person has threatened the victim in order to coerce her to withdraw the prosecution and an FIR, being CR No.62 of 2024, has been lodged.

8. While granting interim bail, this Court had elaborately considered the prosecution version especially the aspect of its apparent inherent improbability. The Court had observed, *inter alia*, as under:

“4. Normally, when the allegations of abduction and sexual exploitation are made, the Court is loathe to consider the prayer for pre arrest bail. However, the facts of the present case and the picture they portray, constrain the Court to consider the aspect of inherent improbability of the prosecution version.

5. Mr. Warunjikar, learned counsel for the applicant

invited the attention of the Court to a criminal Writ Petition (St.) No. 19708 of 2022 which was affirmed by the applicant before the Assistant Registrar, High Court on 11th November, 2022 the day the first informant was sexually exploited. Attention of the Court was also invited to a complaint lodged by the first informant on 30th November, 2022 against the persons who were indulging in illegal transportation of the forest produce. On 18th December, 2022 the first informant lodged a complaint with Dy. Superintendent of Police, Khed wherein the allegations were made against the applicant. It was, inter alia, reported therein that she had already lodged a report against applicant for an offence punishable under section 354 of the Code. In none of these proceedings, the allegations in the instant FIR find mention. The gravity of allegations is such that the first informant would not have missed to state at the first possible opportunity.

6. In the backdrop of this material, the delay of about 8 months in lodging the report, at this stage, makes out a prima facie case in favour of the applicant. It appears that there have been disputes between the applicant and the first informant and Vijay Kate over the alleged illegal transportation of the forest produce and various proceedings have been instituted by and between the parties. That gives, prima facie, heft to the submission of Mr. Warunjikar that the allegations are made to wreak vengeance.

7. In the aforesaid view of the matter, I am inclined to grant interim protection while directing the applicant to join in the investigation.”

9. During the course of the investigation, it does not appear that any further material is collected which makes any qualitative difference in the prosecution version. Had the matter been only of delay in lodging the report, different considerations could have come into play. The Court had noted that the alleged incident had occurred on 11th November, 2022. On 18th December, 2022, the first informant had addressed a complaint with Deputy Superintendent of Police making allegations therein against accused No.1.

However, allegations of having sexually exploited the victim on 11th November, 2022 were not made therein. Having regard to the grave nature of the allegations, which are made in the instant FIR, it would be difficult to believe that the first informant would have missed to state those facts when she lodged a complaint in writing on 18th December, 2022.

10. In view of the aforesaid *prima facie* inherent improbability in the version of the first informant and the attendant facts, especially the inimical relations between the applicant No.1 and Mr. Kate, which is borne out not only by the record but the reference thereto in the various complaints lodged by the first informant – victim herself, I am impelled to make the orders of interim bail absolute.

11. Hence the following order:

: O R D E R :

- (i) Applications stand allowed.
- (ii) The orders of interim bail dated 20th October, 2023 in ABA/2937/2023 and 1st November, 2023 in ABA/3082/2023 are made absolute on the terms and conditions incorporated therein.

- (iii) The applicants shall henceforth appear before the Investigating Officer as and when directed.
- (iv) In the event charge-sheet is lodged, the applicants shall regularly attend proceedings before the jurisdictional Court.

Applications disposed.

[N. J. JAMADAR, J.]