

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

**ANTICIPATORY BAIL APPLICATION NO. 3663 OF 2023**

Amit Harilal Sharma

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Bharat Gadhavi a/w. S. S. Joshi i/b. Surendra U. Sonawane for Applicant.

Ms. Pallavi N. Dabholkar, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 2 JANUARY 2024

PC :

1. The applicant is seeking anticipatory bail in connection with C.R.No.425 of 2023 registered at Kashimira police station, on 13.06.2023, under sections 376(2)(n), 377, 323 and 504 of the I.P.C.

2. Heard Mr. Bharat Gadhavi, learned counsel for the Applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The F.I.R. is lodged by the first informant who was 48 year old lady. She was residing with her son aged 22 years. She was earlier married to her first husband in 1998. From that

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wedlock, the son was born. In 2003, she got acquainted with the present applicant. In 2004, the applicant was removed from his job. Therefore, at his request, the applicant and his wife were allowed to stay with the informant's family. In June 2004, the applicant started a Biotech company in Mumbai. The informant was looking after the business of that company and used to earn handsome profits. In 2006, the applicant told the husband of the informant that he was having affair with the informant. Therefore, there was dispute between the informant and her husband. They started residing separately. The applicant then took the informant and her son to a rented room in Dahisar. The applicant's name was entered in all the important documents of the informant and her son. The applicant also mentioned his name as the father of the informant's son in the official documents. According to the informant, those documents were false. In August 2006, the applicant told the informant that they would stay together as husband and wife.

4. In the F.I.R., it is further alleged that the applicant used to abuse her and used to have forcible intercourse and unnatural

intercourse against her wish. They stayed together at Dahisar from 2006 to 2013 and then they shifted to an ownership flat at Bhayandar. It is her case that, she had become pregnant on four occasions and on all those occasions, she underwent abortion. On these allegations, the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the allegations in the F.I.R. are for the offences U/s.376 and 377 of the I.P.C. The informant had given her complaint to the Senior Inspector of Bhayandar police station on 12.03.2022. She had also given her statement to the protection cell on 16.04.2022. She had filed a complaint under the Protection of Women from Domestic Violence Act, before the J.M.F.C., Thane. In all of these previous proceedings, she had not made any allegations regarding sexual harassment, forcible intercourse or unnatural physical relations. The dispute mentioned in all these proceedings was purely matrimonial in nature. He submitted that, none of the ingredients of those sections are made out and, therefore, the applicant deserves protection of anticipatory bail.

6. Learned APP, though opposed this application, fairly submitted that, as of today, the charge-sheet is filed on 29.12.2023. She produced a copy of the charge-sheet before this court for perusal. She could not really justify the necessity of custodial interrogation of the applicant in the background of these allegations.

7. I have considered these submissions and I have perused the charge-sheet. The charge-sheet contains the informant's statement in the F.I.R., as well as, her statement recorded U/s.164 of the Cr.P.C. The charge-sheet also contains the statements of her son, neighbour, other employees etc. Basically, the main statement which needs to be considered is her own statement. There is no record to show that the informant was forced to undergo abortion and in any case the F.I.R. is not lodged for commission of such offence. Therefore, the main point of consideration is whether the allegations are made with some motive. In this background, as pointed out by the learned counsel for the applicant, the earlier complaints made by the informant with the police authorities, the protection cell and also allegations in the domestic violence

proceedings need to be taken into consideration. In none of these proceedings, any such allegations regarding Section 376 and 377 of the I.P.C. are mentioned. The F.I.R. and the statement U/s.164 of the Cr.p.c. also indicate that the informant and the applicant had a long relationship since the year 2006. They were staying together as husband and wife. The applicant has given his name to the informant's son. The complaint under the Protection of Women from Domestic Violence Act specifically mentions that the applicant and the informant were married. In fact, she has stated that, she was legally wedded wife of the applicant. Thus, she has taken a contrary stand at different stages. The allegations of the offence punishable under sections 376 and 377 of the I.P.C. are made subsequently and apparently are made as an afterthought. The dispute appears to be a matrimonial dispute. The charge-sheet is already filed. There is no necessity of custodial interrogation in the background of these allegations.

8. Considering all these facts, the applicant deserves protection from arrest in connection of this offence.

9. Hence, the following order:

O R D E R

- i) In the event of his arrest in connection with C.R.No.425 of 2023 registered at Kashimira police station, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Applicant shall not cause any harassment to the first informant or her son.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)