

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3450 OF 2024

Umesh Harishchandra Mulik ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Tanmay Jadhav a/w. Mr. Arvind Nair for Applicant.
Ms. Rutuja A. Ambekar, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 18, 2024

P.C. :

. Heard Mr. Jadhav, learned counsel for the applicant and Ms.Ambekar, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0360 of 2024 dated 07.10.2024 registered with Kalamboli Police Station, District - Navi Mumbai, for offences under Sections 85, 316(2) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023 (BNS).

3. The informant, in the present case, is the wife of the applicant and she has levelled allegations against him and his parents, resulting in registration of the aforesaid offences.

4. Apart from allegations of harassment, a specific allegation is made that the applicant being impotent was a fact suppressed from the informant at the time of marriage. It is for this reason that apart from the offence under Section 85 of the BNS, pertaining to the informant being subjected to cruelty, the offence under Section 316 of the BNS has been registered, which pertains to criminal breach of trust.

5. The learned counsel for the applicant submits that the main allegation, pertaining to suppression of the aforesaid fact, can be said to

be baseless because the investigating authority and the informant appear to be relying on a document of November 1992 when the applicant was still a child. It is submitted that the applicant is absolutely healthy and normal and this aspect is sufficiently supported by a recent test undertaken by the applicant and the report dated 11.12.2024, certifying the fact that the applicant is absolutely normal and he cannot be said to be impotent.

6. The learned APP submits that despite notices being issued to the applicant, he refused to appear before the investigating officer. He has not co-operated with the investigation. It is submitted that the documents found during the course of investigation *prima facie* indicate that the particular health condition of the applicant was suppressed from the informant, thereby showing the *prima facie* case against the applicant.

7. This Court has perused the statement of the informant leading to registration of the FIR. As regards allegations of harassment and demand of amount, *prima facie*, the allegations appear to be general and omnibus against the accused persons, including the applicant. Even with regard to the allegation that the aforesaid health condition of the applicant was suppressed from the informant, it *prima facie* pertains to the year 2022, while the FIR has been registered on 07.10.2024. It appears that the genesis of the grievance of the informant is matrimonial discord with the applicant.

8. Although the applicant has produced a recent report dated 11.10.2024, certifying that he is absolutely healthy or indicating that he cannot be called an impotent, this Court would not go into the veracity of the said report. It would be for the investigating authority to investigate from that angle. Nonetheless, this Court is of the opinion that in the light of the allegations made against the applicant and the submissions made on his behalf relying upon the documents

accompanying the present application, the arrest of the applicant may not be justified. The applicant is ready to co-operate with the investigation, including remaining present for medical examination, if so required. In such circumstances, this Court is inclined to allow the application.

9. Accordingly, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with FIR No.0360 of 2024 dated 07.10.2024 registered with Kalamboli Police Station, District - Navi Mumbai, he shall be released on bail on furnishing PR Bond of Rs.25,000/- with one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer on 20.12.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer.
- C. The applicant shall co-operate with the investigation, including remaining present for medical examination, if so required;
- D. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The anticipatory bail application is disposed of.

(MANISH PITALE, J.)