



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 821 OF 2023

Brijesh Kumar s/o Sudhir Ranjan Thakur V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.A. Dhawas, counsel for the applicant.
Mrs. H.N. Prabhu, APP for the non-applicant/State.
Mr. P.S. Dhenge, counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/03/2024.

1. Apprehending arrest at the hands of Police, in connection with Crime No.582/2023 registered with Police Station Ballarsha, District Chandrapur for the offence punishable under Sections 376, 376(2) (n), 498-A and 504 read with Section 34 of the Indian Penal Code, 1860. The present applicant approached this Court for grant of pre-arrest bail.

2. Mr. A.A., Dhawas, learned counsel for the applicant submitted that the informant is the wife of the present applicant and their marriage took place. During the cohabitation, she has filed the complaint which was subsequently settled, and the FIR was quashed against the present applicant. He further submitted that now this FIR is filed with an allegation that present applicant who is her husband assaulted her and harassed her by demanding the amount.

3. It is further alleged that other family members namely relatives of the present applicant – Gopal Jha and Rupeskumar Jha had subjected her for sexual assault, and the present applicant has not intervened in the said act. On the basis of said report, the police have registered the crime against the present applicant.

4. The learned counsel Mr. A. A. Dhawas for the applicant, invited my attention towards the order passed by the Division Bench in quashment of the FIR, wherein it reveals that the informant has stated before the Court that she has no grievance and the FIR was lodged. Due to the miss-understanding and the FIR was quashed by considering her statement. He submitted that now this FIR is lodged with false allegation. The persons, against whom the allegation of sexual assault are made are already released on bail. Initially, there was no allegation against the present applicant that he has subjected her for forceful sexual assault. During the investigation, her statement was recorded and in that statement, first time she made the said allegation. As far as the custodial allegation is concerned, which is not required. In view of that, he be released on anticipatory bail in the event of his arrest.

5. The learned APP strongly opposed the present application on the ground that the statement of the victim as well as the statement of the neighbors shows that she was subjected for harassment and ill-treated at the hands of the present applicant. The statement of the neighbours

specifically shows that the informant has disclosed about her harassment to her. She further submitted that during the investigation, the statement of the informant was recorded under Section 164 Cr.PC wherein, she has alleged that not only the other co-accused the present applicant has also subjected her for forceful sexual assault. Thus, considering the serious allegation against the present applicant, his custodial interrogation is required and the application be rejected.

6. The learned counsel for the informant also raised strong objection on contention that, considering the prima-facie case against the present applicant and the various statement recorded during the investigation, which shows the involvement of the present applicant in the alleged offence. If he is released on anticipatory bail, he would tamper with the prosecution evidence and would not be available for trial, and trial would be held up. He further submitted due to the ill-treatment at the hands of present applicant, the informant has shifted her residence at Bihar. Again, when she had been to Bihar the co-accused subjected her for harassment as well as sexual assault. The mother and the sisters of the applicant have encouraged them for such cruel and heinous act to have a sexual intercourse with her, and thereby committed the serious offence.

7. He further submitted that from the conduct of the applicant it shows that he married with the respondent No.2 only save herself from the heinous crime and criminal

litigation and swiftly escape to run away from heinous act of the applicant, prior to their marriage. The respondent No.2 had tried a level best to save her matrimonial life but the applicant and his family members have subjected her for continuous ill-treatment. Considering the nature of offence, the application deserves to be rejected.

8. Having heard learned counsel for the applicant and learned APP for the State as well as learned counsel for the victim, perused the investigation papers. There is no dispute as to the fact that, initially also the crime was registered and the applicant has filed an application for quashment of the FIR. Wherein the present respondent No.2 appeared and submitted that out of the miss-understanding, she lodged the report. She further submitted that now, she got married with the present applicant and residing with the present applicant, and therefore earlier FIR was quashed. It further revealed from the documents that, after the first incident i.e. lodging of the initial the report, the applicant and the informant arrived at the settlement, and in view of the settlement, the present applicant has performed the marriage with her.

9. During the investigation, the investigating officer has recorded the various statements as well as the statement of the informant is also recorded under Section 164 of the Cr.P.C. Considering the recitals in the FIR and the statement recorded under Section 164 Cr.P.C., admittedly, the informant has improved her version. Initially, there is no

allegation against the present applicant that he had subjected her for sexual assault. The said allegation is made first time when her statement was recorded under Section 164 Cr.P.C. The statement of the neighbors are also recorded to show that the informant was subjected for ill-treatment and harassment.

10. Even assuming the allegations at it is, it reveals that the present applicant and the informant performed the marriage, they were residing together for some years. The allegation in the FIR is against the co-accused regarding the sexual assault, are already released on bail. In the FIR, there is no allegation against the present applicant regarding sexual assault. The investigation papers shows that the material investigation is carried out by the investigating officer. The medical examination of the victim is also carried out. As far as the custodial interrogation of the present applicant is concerned, which is not required. In view of that, application for grant of anticipatory bail deserves to be allowed.

- a] The Criminal application is **allowed**.
- b] In the event of his arrest, in connection with Crime No.582/2023 registered with Police Station Ballarsha, District Chandrapur for the offence punishable under Sections 376, 376(2) (n), 498-A and 504 read with Section 34 of the Indian Penal Code, 1860, the applicant- Brijesh Kumar s/o Sudhir Ranjan

Thakur, shall be released on anticipatory bail, on furnishing P.R. bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall attend the concerned Police Station twice in a week i.e. Sunday and Thursday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.
- d] The applicant shall not induce, threat or promise any other witnesses who are connected with the alleged crime.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]