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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2587 OF 2026

Ritesh Sureshbhai Desai ...Applicant
V/s.
State of Maharashtra and Anr. ...Respondents

Mr. Tushar N. Sonawane a/w Ms. Pooja D. Satpute, for the Applicant.

Mr. Khwaja Shaikh, for Respondent No. 2.

Mr. Bapu V. Holambe Patil, APP for the Respondent – State.

Ms. Tejashree Shintre, PSI, Kandivali Police Station, Mumbai, is present.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 14th OCTOBER, 2026.

P.C. :-

1. Heard learned counsel for applicant as well as learned APP for respondent-State and learned counsel for respondent no. 2.

2. Apprehending arrest in connection with FIR No. 979 of 2026 registered with Kandivali Police Station for the offencce punishable under Section 85, 77, 79, 115(2), 352, 351(2) of Bharatiya Nyaya Sanhita, the applicant/husband of the complainant, has filed the instant application seeking pre-arrest bail.

3. Learned counsel for applicant submits that the complainant has alleged in the FIR that the applicant, who is arraigned as accused no. 2 and who is husband of the complainant, has indulged in various acts of cruelty in view of his repeated insistence on indulging in unnatural sex and repeated demand of dowry of Rs. 25,00,000/-. He submits that, on the basis of allegations against other family members alleging acts of cruelty, the offence is registered against five persons, including this applicant. He submits that the offences alleged are punishable with a maximum punishment of three years, except for offence under Section 77 of BNS, for which punishment is minimum three years and up to seven years of imprisonment and the allegation with regard to this offence are against accused no. 1, Suresh, to whom anticipatory bail has already been granted by the Sessions Court.

4. As regards the allegations about the conduct related to offence under Section 377 of the IPC (now repealed), learned counsel for applicant submits that, these allegations are without any basis and are leveled only to add seriousness to the offence. Further, by relying on the provisions of Section 63, particularly Exception 2, he submits that no offence is made out against this applicant. He also invites attention to the fact that the constitutional validity of Exception 2 of

Section 63 of BNS is itself under challenge and issue is pending before the Hon'ble Supreme Court in the matter of Hrishikesh Sahoo Vs. State of Karnataka in SLP Criminal No. 4063-4064 of 2022 that WP No. 1022 of 2019. He, therefore, submits that, in any case, at this stage, the applicant cannot be implicated in an offence under Section 63 of the Act.

5. Apart from this, he submits that there are no criminal antecedents against the applicant and since offence is registered against him, the applicant is ready to join the investigation and attend the Police station.

6. The learned APP for the respondent and learned counsel for respondent no. 2 has vehemently opposed the application. It is pointed out that there are specific allegations about acts of 'cruelty' by this applicant, as the complainant has alleged his repeated insistence on engaging in unnatural sex. It is also submitted that the applicant has persistently made demand of dowry and considering the nature of allegations, the offence is serious.

7. Learned counsel for respondent no. 2 also invited attention to the specific allegations in FIR against all the family members and pointed out that all the accused persons have repeatedly engaged in acts of harassment and cruelty.

8. Perused of the FIR and the documents placed on record. It appears that the offences alleged against this applicant are punishable with imprisonment up to three years. Although allegations have been made regarding acts of cruelty and indulgence in unnatural sex, the same are subject matter of investigation. At this stage, it *prima facie* appears that the applicant has levelled allegations mainly about offence of 'cruelty' against all the family members to rope all of them into the offence. It has to be noted that no offence is registered under Section 63 of BNS and the instant application needs to be considered on the basis of offences stated in FIR.

9. Considering the fact that there are no other criminal antecedents against the applicant, the custodial interrogation of this applicant need not be insisted upon. The applicant's presence can be secured by directing him to join the investigation and attend the Police Station.

10. In view of the above, I pass the following order.

: ORDER :

(i) Anticipatory Bail Application is allowed.

(ii) In the event of arrest of the applicant in connection with Crime No. 979 of 2026 registered with Kandivali Police Station for the offencce punishable under Section 85, 77, 79, 115(2), 352, 351(2) of Bharatiya Nyaya

Sanhita, the Applicant may be released on bail on furnishing P.R. Bond of Rs. 25,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount.

(iii) The applicant is directed to attend the Police Station as and when called upon by the Investigation and extend cooperation.

(iv) The applicant shall not pressurize or influence any of the prosecution witnesses

11. The Application is accordingly allowed and disposed of in above terms.

(PRAFULLA S. KHUBALKAR, J.)