

MHCC050066022022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO. 1972 OF 2022

IN

(C.R. No. 2278 of 2022 of Sakinaka Police Station, Mumbai)

1) Mr. Sonu Surendra Jain,

Adult, Indian Inhabitant, Age : 38 yrs.,

2) Smt. Seema W/o. Manoj Jain,

Adult Indian Inhabitant, Age : 39 yrs.,

Both R/o : J/12, Nensey Cottage CHS., Nensey Colony,

Borivali (E), Mumbai 400 066

..Applicants

Vs

The State of Maharashtra

(through Sakinaka Police Station)

..Respondents

Ld. Adv. Vikas Singh, for the applicants.

Ld. APP Sachin Jadhav, for the State.

Ld. Adv. Sunny Waskar h/f Adv. Samarth Karmarkar, for the intervenor.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE
R.M. MISHRA
(C.R.NO.4)**

DATE : 20th December, 2022

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 2278 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 324, 323, 506, 504 read with section 34 of the Indian Penal Code and section 75 of the Juvenile Justice Act.

2 Perused application and say. Heard learned advocate for the applicants, the intervenor and learned APP for the State.

3 On 25/11/2022 at the instance of Manoj Premchand Jain aforesaid offence came to be registered.

As per the allegations in the FIR, the informant was married with the applicant no.2 in the year 2010. In the year 2013, the spouse were blessed with female child. The applicant no.2 started doing the job by keeping her three month's daughter in *palna ghar* from 10 hours to 22 hours. The spouse were residing in the house of Sangharsh Nagar, Sakinaka till 2021. During that period, the applicant no.2 used to cause beating to her daughter. The applicant no.2 used to cause her to perform household works and also do not provide food. When the informant made enquiry about such ill-treatment, at that time, the applicant no.2 told that the daughter is lying. Their maid servant also disclosed the informant about the ill-treatment to their daughter at the hands of the applicant no.2. In order to find out the truth, the informant had installed hidden camera in the house. At that time, he came to know that the applicant no.2 used to beat the daughter by means of kitchen

articles like *chimta*, *belan* and by touching hot iron etc. The applicant no.2 used to cause her to perform household work like cleaning the house, utensils etc. Sometimes the applicant no.2 used to confine her in the bathroom etc. The applicant no.2 also used to raise quarrel with the informant by causing beating to him. In the year 2021, the informant purchased another flat. At that time also the applicant no.2 raised quarrel with the informant on the ground that he has not purchased the said flat in her name. When the informant used to complain about the behaviour of the applicant no.2 to his in-laws, at that time, her brother i.e. applicant no.1 used to issue threat to the informant by saying that he would not allow him to meet his daughter if the informant failed to transfer the said flat in the name of the applicant no.2. Thereafter by raising quarrel with the informant the applicant no.2 left her matrimonial home by taking her daughter and started residing in the house of the applicant no.1 at Borivali. At several times the informant tried to meet his daughter but he was not allowed by the applicants to meet with his daughter. On 21/04/2022, the applicant no.2 lodged the false complaint against the informant in Parksite Police Station under section 498-A of the Indian Penal Code. There is an offence registered against the applicant no.1 under section 354 of the Indian Penal Code and sections 8 and 12 of the POCSO Act. In view of ill-treatment and harassments at the hands of the applicant no.2 and considering the aforesaid antecedent of the applicant no.1, the informant has an apprehension in his mind about the safety of his daughter who is residing in the house of the applicant no.1. On 12/10/2022 the informant went to the house of the applicants by accompanied with the

officer bearers of one NGO to meet his daughter. However, the informant was not allowed by the applicants to meet with his daughter. On the contrary, the applicant no.1 called the police and at the instance of the applicant no.2 N.C. case came to be registered against the informant. Accordingly the report came to be lodged.

4 By this application, the applicants have contended that the informant is trying to drag them in such unwanted litigations but he could not succeeded in his attempt. The informant is causing all kinds of nuisance, cruelty and harassments to these applicants. The applicants have also filed petition before the Hon'ble High Court for quashing the FIR which is false and fabricated. The applicants are having an apprehension of arrest in this crime. The applicants are ready to abide conditions imposed by the court. The applicants, therefore, prayed for their release on anticipatory bail.

5 Application is resisted by the prosecution vide say Exh. 05 mainly on the ground that the applicants remained absent when they were called upon by issuing notice under section 41(1)A of the Code of Criminal Procedure. There is an offence registered against the applicant no.1 in the Police Station Borivali vide Crime No. 1344 of 2022 under sections 354 of the Indian Penal Code and sections 8 and 12 of the POCSO Act. The child victim was sent before the Child Welfare Committee on 23/11/2022. After making necessary enquiry, the applicants were directed to produce the child victim in Cooper Hospital every week for counseling and the informant was also permitted to meet

his daughter on every Saturday. However, the applicants have refused to comply with these directions. There is possibility of pressuring the witnesses by the applicants. The statement of child victim is yet to be recorded. Necessary articles which were used in causing beating to the victim child are to be recovered. It is thus, contended that the application is liable to be rejected.

6 The complainant also filed intervener application resisting the application for releasing the applicants on anticipatory bail. Intervenor has also filed photographs of so-called hidden camera to show that his daughter was ill-treated at the hands of the applicant no.2.

7 After considering the submissions of both sides, I have also gone through the case diary coupled with the material produced on record.

8 Having regard to the entire facts and circumstances, it appears that the marriage between the informant and the applicant no.2 was solemnized in the year 2010. The applicant no.2 gave birth to the female child in the year 2013. It reveals that the spouse resided at Sangharsh Nagar, Sakinaka from 2010 to 2021. Thereafter on 15/07/2021 the spouse were shifted in the flat of Kanjur Marg where 9th birthday of Ananya was celebrated by them jointly on 28/01/2022. The applicant no. 2 is supposed to have left her matrimonial home and started residing separately along with her brother (applicant no. 1) since 04/02/2022. It reveals that on very next day i.e. on 05/02/2022,

the applicant no.2 had lodged report against the informant in Dahisar Police Station. Thereafter, on 21/04/2022, the applicant no.2 lodged report under section 498-A of the Indian Penal Code in the Police Station Parksite. So far as lodging of this report is concerned, on 12/10/2022 the informant had been to the house of the applicants accompanied with the office bearers of one NGO. At that time, upon refusal to allow the informant to meet with his daughter quarrel took place and the matter was again reported to the police station. Accordingly, NC was registered against the informant.

9 The informant tried to support his contention by producing the photographs on record to show that his daughter used to be ill-treated at the hands of the applicant no.2. On the basis of the copy of FIR in Crime No. 1344 of 2022 under section 354 of the Indian Penal Code and sections 8 and 12 of the POCSO Act, the informant also tried to show the earlier antecedent of the applicant no.1. However, it is equally important to mention that the informant had also lodged the complaint before the Maharashtra State Human Rights Commission which came to be disposed of on 28/07/2022. One of the observations made by the Human Rights Commission in the said order is that upon secret enquiry with the child, it was found no any such ill-treatment of beating has been caused to her by her mother. On the basis of attending circumstances on record, it reveals that there is matrimonial dispute between the informant and the applicant no.2. Even if severe allegations are made in the FIR, there is inordinate delay in lodging the report. Another thing to be taken into consideration is that the female child is

still in the custody of the applicant no.2 who is her natural mother. Considering all these circumstances, in my view, nothing is to be recovered or discovered by way of custodial interrogation of the applicants. In these circumstances, if certain conditions are imposed while granting anticipatory bail to the applicants, purpose will be served. In this view of the matter, following order is passed :

ORDER

- 1) Application under section 438 of the Code of Criminal Procedure for the grant of anticipatory bail is allowed.
- 2) In the event of arrest of the applicants **1) Sonu Surendra Jain** and **2) Smt. Seema W/o. Manoj Jain**, in connection with C. R. No. 2278 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 324, 323, 506, 504 read with section 34 of the Indian Penal Code and section 75 of the Juvenile Justice Act, they be released on bail, on their executing PR Bond of Rs. 15,000/- each (Rupees Fifteen Thousand Only), with one solvent surety in the like amount, on the following conditions-
 - a) The applicants no.1 and 2 shall remain present before the Investigating Officer on every Sunday between 10.00 hours to 12.00 hours and shall co-operate the Investigating Officer as and when called upon until investigation is completed.
 - b) The applicant no.2 shall produce her daughter before the Competent Authority i.e. Child Welfare Committee etc. if the same is found to be necessary as per the directions of the Investigating Officer until investigation is over.

c) The applicants shall not tamper to pressurize any of the prosecution witnesses nor shall tamper the evidence of prosecution in any manner.

3) Concerned Police Station be informed accordingly.

4) Anticipatory Bail Application No. 1972 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Dt. 20/12/2022

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 20/12/2022
Transcribed on : 20/12/2022
Checked on : 20/12/2022
Signed on : 20/12/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

21/12/2022 at 2.29 p.m.
UPLOAD DATE AND TIME

Mrs. S.B. Vichare
NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	20/12/2022
JUDGEMENT/ORDER signed by P.O. on	20/12/2022
JUDGEMENT/ORDER uploaded on	21/12/2022