

ABA 1870/2022

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ORDER

MHCC050062352022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 1870 OF 2022
(C. R. No. 883/2022)
(CNR NO.MHCC05-00-2022)**

Rakhi Anant Sawant

Age – 44 years, Occ : Artist,
An Adult of Indian Inhabitant,
Residing at : B-2/501, Serenity Complex,
New Link Road, Oshiwara, Andheri (West),
Mumbai – 400 058.

...Applicant/Accused

V/s.

The State of Maharashtra

(Through Amboli Police Station, Mumbai)

....Respondent

Ld. Advocate Mr. Sushil Mishra for the Applicant/Accused.

Ld. APP Mr. Sachin Jadhav for The State.

Ld. Advocate Shareen for the Intervener.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI. SHRIKANT Y. BHOSALE
(C.R.NO.9)**

DATE : 18TH JANUARY, 2023

ORDER

In anticipation of arrest in C. R. No.883/2022 registered with Amboli Police Station for the offence punishable under sections 354(A), 500, 504, 509 r/w 34 of IPC and Section 67(A) of Information and Technology Act, the applicant has made this application for pre-

arrest bail.

2. Prosecution vide say Exh. 5 resisted the application.
3. Heard Ld. Advocate Mr. for the applicant and Ld. APP Mr. for The State.
4. The sum and substance of the case of the prosecution is that the informant and the applicant/accused are models and there is rivalry between them. In past also there were several complaints filed against each other. On this background, the informant alleges that on 31.10.2022, the applicant before the media showed some videos of the informant and made defamatory statement. According to the informant the video of the informant displayed before media were sexually explicit.
5. Ld. Adv for the applicant vehemently submit that except section 67 of I.T. Act, all other sections are bailable. According to him section 67(A) is applicable only when the sexually explicit material is published or transmitted or caused to be published or transmitted in the electronic form. According to him there is no allegation that the applicant has either published or transmitted the said material. According to him the videos allegedly displayed by the applicant are available on net, therefore, the custody of the applicant is not at all necessary for the purpose of investigation. According to him the applicant is ready to handover the mobile phone to the police. He further pointed out regarding the incidence the applicant has also filed counter case C. R. No. 1518/2022 for the offence punishable under sections 500, 504, 506 and 509 of The IPC to Versova police station. Considering these aspects he submits that this is a fit case where anticipatory bail can be granted. Ld. Adv for the applicant relied on the

decision between *Pramod Anand Dhumal V/s. State of Maharashtra, in Anticipatory Bail Application No. 1114 of 2020, decided on 07.01.2021 by The Hon'ble Bombay High Court*, specially para 9 and 10.

6. As against this Ld. APP submits that the videos displayed by the applicant before the media needs to be verified and that can be done only if those videos are seen and that is possible only by verifying the device which was used by the applicant at relevant time. According to prosecution the notice under section 41(A) of Cr.P.C. was served on the applicant on 10.11.2022, but there was no positive response from the applicant. Though she appeared before investigation officer on 14.11.2022, she did not handover her mobile phone. Thus, unless the applicant has been arrested, proper investigation is not possible and hence, the bail application needs to be rejected.

7. Ld. Adv Shareen for the intervenor submits that the videos which were shown before the media and the media transmitted the said where sexually explicit material. The investigation officer has to ascertain that which videos were displayed and how many such videos are available. At the same time the device which was used by the applicant to display the videos is also an important piece of evidence. In such circumstances, not only the recovery of the device but custodial interrogation is absolutely necessary and therefore, it is just and proper to reject the application.

8. First I would like to mention that except offence under section 67(A) of Information and Technology Act, other offences are bailable. To attract section 67(A) of I.T. Act, it is necessary that there should be an allegation that sexually explicit material is either

published or transmitted or caused to be published or transmitted in electronic form. The informant has alleged that the applicant on 31.10.2022 played videos on her mobile phone containing obscene picture and videos of the informant. This allegation of showing porn video before the media *prima facie* attract section 67(A) of Information and Technology Act. Thus, *prima facie* material is available against the applicant.

9. In case between *Pramod Anand Dhumal V/s. The State of Maharashtra, in Anticipatory Bail Application No. 1114 of 2020, decided on 7th January, 2021, by The Hon'ble Bombay High Court*, considering the facts of that case held that Section 67 of The Information and Technology Act is applicable and not Section 67(A) of the I.T. Act. Further, the anticipatory bail was granted while considering the fact that the dispute cell phone was handed over to the investigating officer and therefore, custodial interrogation held not necessary. However, in the present case inspite of giving opportunity to the applicant, cell phone was not handed over nor the applicant co-operated the investigation agencies, therefore, in my view cited decision is not helpful to the applicant.

10. In light of the above, it is seen that the mobile device which was allegedly used to display the porn videos and obscene photos of the informant, is an important piece of evidence and that needs to be recovered. It is further seen that investigating officer has issued notice to the applicant under section 41(A) of Cr.P.C. However, she did not produce the mobile phone though she appeared before the investigation officer. It is further seen that according to prosecution thereafter also the applicant neither produced the mobile nor appeared before the investigating officer. Now Ld. Adv for the applicant is submitting that

the applicant was thereafter busy in one T.V. show, hence, could not appear before the investigation officer. In light of the serious allegation, the above explanation of the applicant do not appear to be justifiable. It is also argument of the applicant that she is ready to produce her mobile device before the investigating officer. However, considering the fact that when the opportunity was with the applicant, she failed to produce her mobile phone before the investigation officer. In such circumstances, no question arises to believe on the argument of the applicant that she will produce the mobile device before investigation officer.

11. From the above discussion it is seen that *prima facie* material is available against the applicant and she is not co-operating the investigation agency when the opportunity was given to her. In such circumstances, the Court is of the view that no case for anticipatory bail is made out. Hence, the order.

ORDER

Anticipatory Bail Application No. 1870 of 2022 stands rejected and disposed off.

(Dictated and pronounced in presence of Ld. Advocate for Applicant & Ld. APP)

Date: 18.01.2023

(Shrikant Y. Bhosale)
The Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi.

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ORDER

Dictated on : 18.01.2023
Transcribed on : 18.01.2023
Checked & corrected on : 19.01.2023
Signed on : 19.01.2023
Sent to Dept. on :

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 20/01/2023 Time : 10.53 A.M. UPLOAD DATE AND TIME	Ms. Tejal C. Rane (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ S. Y. BHOSALE (Court Room No.9)
Date of Pronouncement of JUDGMENT/ORDER	18.01.2023
JUDGMENT/ORDER signed by P.O. on	19.01.2023
JUDGMENT/ORDER uploaded on	20.01.2023