

MHCC050061912022



**IN THE COURT OF SESSIONS, AT DINDOSHI  
(BORIVALI DIVISION), GOREGAON, MUMBAI  
ANTICIPATORY BAIL APPLICATION NO. 1859 OF 2022  
C.R. No.1419 of 2022  
(CNR NO.MHCC050061912022)**

**Bandu Shankar Kulkarni**

Aged – 59 years, Occ: Retired MCGM Officer,  
Residing at : Flat No. 901, Sai Baba CHSL.  
Sant Muktabai Road, Vile Parle (East),  
Mumbai-400 057.

**...Applicant/Accused.**

**V/s.**

**The State of Maharashtra**

(at the instance of Senior Inspector of police  
Samata Nagar Police Station, Mumbai  
C.R.No.1419/2022)

**....Respondent**

Ld. Advocate Smt. Sunita Sutrale for the Applicant/Accused.  
Ld. Advocate Shri. Ajinkya Pokharkar for Intervener.  
Ld. APP Shri. R.C.Salve for The State.

**CORAM: H. H. The Additional Sessions Judge  
Shri. Shrikant Y. Bhosale  
(C.R.NO.13)**

**DATE : 21<sup>st</sup> December, 2022**

**O R D E R**

In anticipation of arrest in C. R. No.1419/2022 registered with Samta Nagar Police Station for the offence punishable under sections 498(A), 376(B), 377, 417 of IPC, the applicant has made this application for pre-arrest bail.

2. Prosecution vide say Exh. 2 resisted the application. So also the intervenor appeared through Adv. Pokharkar and opposed the application by filing his say.

3. Heard Ld. Advocate Sunita Sutrale for the applicant and Ld. APP Mr. Imran Shaikh for The State and Ld. Adv. Pokharkar for the intervenor.

4. The allegation of the prosecution in short is that according to the informant she married with the applicant on 02.10.1997. They were residing together till 2006, however, thereafter, some differences took place in between them. According to the informant they both were loving each other, hence, she again started residing with the applicant. In 2009 applicant filed petition for nullity of a marriage and said has been rejected by the Competent Court. She further alleged that after 2014 the applicant stopped coming to her house. According to the informant inspite they were living separately, applicant started talking her on phone and started to visit her house. She alleges that applicant sometime established unnatural intercourse with her, however, as she was loving the applicant she did not make any complaint. She also alleges that in 2014 she become pregnant, however, the applicant compelled her to abort the fetus. She further states that in 2014 she was in a financial crises and therefore, sold her flat and started residing with her brother. According to her, in January, 2020 the applicant came in vehicle i.e. Wagoner and in the said car established natural as well as unnatural sexual relation with her. However, there was period of pandemic, hence, she could not lodge the first information immediately. The first information is lodged on 09.11.2022.

5. Ld. Adv for the applicant submits that the informant has

suppressed material facts from the police as well as from the Court. According to her, the applicant had filed non-cognizable cases bearing 5012/2008, 3116/2009, 3044/2017 against the intervener and watchman of the applicant's office lodged non-cognizable case 6005/2009, mother of the applicant filed N.C 4017/2010 against the applicant. Apart from the said, the applicant filed proceeding 82681 of 2009 for nullity of marriage. The order in said matter is challenged by the applicant by way of Appeal No. 99 of 2017 and said is pending before The Hon'ble High Court. In said matter the applicant made an civil application no. 153 of 2017 and The Hon'ble High Court has enjoined the intervener from entering the office of the applicant. The applicant has also filed private complaint 890 of 2017 before the Metropolitan Magistrate against the intervener for allegation of defamation.

6. According to applicant the intervener also made several complaints against the applicant. In 2010, she made complaint to NGO, on 08.11.2011 she filed non-cognizable case 2637 of 2012 with Samta Nagar police station in which the Ld. Metropolitan Magistrate on 12.05.2012 granted permission to investigate the non-cognizable case. On 12.01.2015 police submitted report and its conclusion in short is that the allegation of abortion, cheating, suppression of first marriage are not sufficient to stand, the marriage certificate relied by intervener is doubtful and that the intervener is in habit of making similar complaints again and again.

7. She further submit that the intervenor has filed private complaint 117/SS/2015 before the Metropolitan Magistrate with a request to send the matter for investigation under section 156(3). In the said complaint similar allegation of commission of rape, suppression

of previous marriage and cheating were made. The Ld. Magistrate rejected the said application and instead, ordered inquiry under section 202 of Cr.P.C. The intervener challenged the said order vide Revision Application No. 16 of 2016 and Sessions Court dismissed the said on 22.01.2018. The intervener then approached The Hon'ble High Court in Writ Petition No. 2952 of 2018 and said is pending. She therefore submits that the allegations made by the intervener are false and only with a view to harass and pressurize the applicant. It is her argument that if several complaints are already made by the parties, then it is not acceptable that even thereafter the applicant meet the intervenor and establish physical relation. She therefore submit that the allegations are devoid of merit and hence, no custodial interrogation is necessary.

8. As against this Ld. APP submits that the offence is of serious nature. The offence took place in one vehicle and the investigation officer want to seize the said vehicle. He also submit that there is allegation of forcible abortion and investigation to that effect is also necessary. The Ld. Adv for the intervener submits that the applicant has committed several offence against the applicant. Initially he suppressed his first marriage from the applicant and thereafter, initiated proceeding for declaration that the marriage between them is null and void. He also narrated the history of allegation since 2009 onwards and submit that custodial interrogation is necessary.

9. The Ld. Adv for the intervener submit that the medical examination of the applicant is necessary in light of allegations of commission of offence punishable under section 376 of The IPC. At the same time the Wagner in which the offence was committed, needs to be seized. The applicant is influential person and if anticipatory bail is granted, he may pressurize the witnesses and therefore, the application

needs to be rejected.

10. After having regards to the facts and circumstance of the case and the arguments advanced by the respective advocates, firstly, it is seen that in past also, the informant had made several complaints against the applicants to the police, to the court, to the NGO's etc. The report of Samta Nagar police station dtd. 12/01/2015 to the Ld. Metropolitan Magistrate, 17th Court, Borivali, Mumbai, clears that, most of the allegation of the informant are already inquired and said are 1) Allegations that the applicant suppressed his previous marriage and married with the informant 2) Allegation of forcible abortion 3) Allegation of commission of an offences U/s.375(4), 376, 417 of IPC. In the said report the concerned police officer has made observation that the informant is in habit to make repeated complaints.

11. If the allegations in the first information are considered alongwith the said report of the police dtd.12/01/2015, it is seen that, only allegation of commission of rape and commission of unnatural intercourse in January 2020 is new allegations. In this regard, it is seen that, the offence was allegedly committed in January 2020 and the first information is filed on 09/11/2022, i.e. after about the 3 years. The explanation of informant to that effect can not be accepted as genuine reasons since the offence was serious in nature and even in covid pandemic it was possible for her to inform the said to the police on telephone or by other means. It is also pertinent to note that after pandemic situation, the life has become normal around one year back. No explanation is offered for not filing information to the police in said period. Thus it is possible that the allegation are after thought.

12. According to Ld. APP, the custodial interrogation is

necessary for seizure of the vehicle in which the offence of rape was allegedly committed, to investigate regarding forcible abortion etc. It is pertinent note that since 2009 till 2017 number of complaints and proceedings were filed by the parties against each other. The informant vide complaint 117/SS/315 had already made allegations of commission of rape against her by present applicant. Not only this but the applicant had also approached the Hon'ble High Court prevent the informant from entering in his office. On this background, the allegation of the informant regarding commission of rape in January 2020, appears to be doubtful since no person in such a situation can take the risk specially when the relation between the informant and the applicant were inimical. So far as, allegation of abortion is concerned, it is seen that the said were already inquired by the police vide report dated 12/01/2015.

13. In short, the allegation of the informant regarding commission of rape in January 2020 is not inspiring the confidence. Apart from the said considerable period after commission of alleged offence is already over. In such circumstance, custodial interrogation do not appears to be fruitful. There appears possibility that with a view to harass and humiliate the applicant, informant has lodged the present report.

14. Considering all these aspect, I am of the view that, the case for anticipatory bail is made out by the applicant. Hence, I pass following order :

**ORDER**

1. Anticipatory Bail Application No.1859 of 2022 stands conditionally allowed.

2. In the event of arrest, of applicant/accused in aforesaid C. R. No.1419/2022 for the offence punishable under sections 498(A), 376(B), 377 and 417 of The Indian Penal Code, 1860, registered with Samta Nagar Police Station, Mumbai applicant/accused **Bandu Shankar Kulkarni** be released on his executing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) and on furnishing one surety of like amount and on accepting and complying following terms and conditions -

- a) He shall not tamper with prosecution witnesses in any way.
- b) He shall produce his Identity Card, address proof and furnish his mobile number as well as land-line number with bail papers.
- c) He shall attend concerned police station each Wednesday till 18th January 2023, in between 10.00 a.m. to 2.00 p.m. and thereafter, if required by the investigation officer by his order in writing.
- d) He shall attend the trial regularly.
- e) The observation made in this order are restricted to the bail application only and the Trial Court shall not get influence by the observation of this Court.

3. Anticipatory Bail Application No. 1859 of 2022 stands disposed of.

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

**Date: 21/12/2022**

**(Shrikant Y. Bhosale)**

The Addl. Sessions Judge  
City Civil & Sessions Court,  
Borivali Division, Dindoshi.

Dictated on : 21.12.2022  
Transcribed on : 21.12.2022  
Checked & corrected on : 23.12.2022  
Signed on : 23.12.2022

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ORDER

Sent to Dept. on

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

Date : 23/12/2022

Time : 4.36 P.M.

UPLOAD DATE AND TIME

Mrs. M.M.Palav

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

**HHJ Shrikant Y. Bhosale  
(Court Room No.13)**

Date of Pronouncement of  
JUDGMENT/ORDER

21.12.2022

JUDGMENT/ORDER signed by P.O. on

23.12.2022

JUDGMENT/ORDER uploaded on

23.12.2022



**ABA NO.1859/22**

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**ORDER**