

ABA 1834/2022

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ORDER

MHCC050061282022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 1834 OF 2022
C. R. No. 978 of 2022
(CNR NO.MHCC05-006128-2022)**

Mr. Sachin Kisan Naik

Age – 47 years, Occ : Service,
Residing at : B/81. Ganga Kunj, Room No. 3,
Yashodham High School,
Yashodham Complex, Goregoan (East),
Mumbai – 400 063

...Applicant/Accused

V/s.

The State of Maharashtra

(Through Kurar Police Station, Mumbai
C.R.No. 978/2022)

....Respondent

Ld. Advocate Neha Patil or the Applicant/Accused.

Ld. APP Mr. Imran Shaikh for The State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI. SHRIKANT Y. BHOSALE
(C.R.NO.13)**

DATE : 21ST NOVEMBER, 2022

ORDER

In anticipation of arrest in C. R. No.978/2022 registered with Kurar Police Station for the offences punishable under sections 376(2)(n), 506 of IPC, the applicant has made this application for pre-arrest bail.

2. Prosecution vide say Exh. 2 resisted the application. The investigation officer is also present alongwith the case diary. The Ld. Advocate for intervenor assisted the Ld. APP.

3. Heard Ld. Advocate Neha Patil for the applicant and Ld. APP Mr. Imran Shaikh for The State.

4. From the material on record the case of the prosecution appears to be that accused is brother in law of the informant. According to the informant she was in need of accommodation and the accused who is brother in law assured her to provide accommodation at Appa Pada. It is alleged that in February, 2022 the accused took the informant at Appa Pada and administered some medicine because of said, she felt giddy and taking advantage of the said, the accused committed sexual intercourse with her. Further it is alleged that the accused took nude photographs of the informant and subsequently started threatening the informant that he will show the photographs to her husband and the relatives. By giving the threat thereafter accused committed sexual intercourse with her for four times.

5. According to the Ld. Advocate for the applicant there is civil dispute between him and his brother i.e. husband of the informant. The proceeding to that effect are going on since 2008. She invited my attention towards page no. 11 i.e. an application for taking the heirs on record filed before Tahasildar. She then invited my attention towards page no. 29 i.e. the copy of the first information filed by the informant against unknown person, wherein the allegation is made that some person is making her video calls and most probably he is friend of the present accused. She then pointed out the Leave and License Agreement filed at Exh. E at page no. 37 and 45 to show that the flat

were the incidence allegedly took place was not vacant during February, 2022 to 11.04.2022. On the contrary it was occupied by Kalpana Shinde. According to her the investigation officer has recorded statement of said Kalpana wherein she stated that till August, 2022 she was residing in the said flat.

6. According to Advocate for the applicant if the above facts are considered alongwith the fact that since 2018 the applicant has filed various non-cognizable cases against the husband of the informant, it is highly improbable that the applicant has committed the act as alleged. She therefore submit that the entire proceeding is false and is filed with an intention to pressurize the applicant to give up the legal matter.

7. As against this the Ld APP submits that establishing fact that at relevant time the flat i.e. spot of incidence was occupied by Kalpana Shinde is not sufficient, since the possibility can not be ruled out that applicant had taken the informant to the said flat during the absence of Kalpana Shinde. According to Ld. APP it is a matter of investigation. He further submit that the objectionable photographs of the informant are with the applicant and the handset of the accused needs to be recovered. He therefore, submit that the offence is of serious nature and even though no custodial interrogation is necessary, the anticipatory bail can be rejected. He relied on the decisions of The Hon'ble Supreme Court in *Criminal Appeal No. 1834 of 2022 @ Petition for Special Leave to Appeal (Cri) No. 7188 of 2022 versus Arun Kumar C. K. & Anr., 2022 LiveLaw (SC) 870*.

8. After going through the material on record firstly it is seen that the informant is alleging that the spot of incidence is Flat No. 108, Sankalp Co-operative Hsg Society, SRA Complex, Building No. 5, Appa

Pada, Kurar Gaon, Malad, it is admittedly the flat of applicant/accused. The investigation officer has recorded the statement of one Kalpana Shinde who is tenant in the said property. According to her she was residing in the said flat till August, 2022. This fact is confirmed by the investigation officer. If this is so then the allegation of the informant that rape was committed in said flat in the year February, 2022 is absolutely not believable. Ld. APP tried to convince that it is possible that when the said tenant had gone out of the flat, the applicant/accused might have used it. The said is also not acceptable, since according to the informant time and again she was taken to the said flat and rape was committed. Thus, the allegation of the informant is not inspiring any confidence. To support the above allegation, it is further seen that the informant on 21.10.2022 has filed the first information against unknown person wherein it is alleged that some unknown person on the instance of the present applicant is sending the messages and making video call to her. In the said information the informant says that there is dispute between her family and family of the applicant regarding Survey No. 229 and 230. She further states that because of the said dispute, there are frequent quarrels in between her family and the applicant. If such strange relations are there, it is difficult to accept even on *prima facie* basis that the applicant asked her to come to a flat and without any question she went to the flat. Thus, the genesis of the incidence as narrated in the first information is highly doubtful.

9. Ld. APP relied on the Judgment of the Hon'ble Supreme Court in *Criminal Appeal No. 1834 of 2022 (supra)*, in said Appeal the Hon'ble Supreme Court has observed that even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant

anticipatory bail. However, in the present case the basic allegation of the informant is not inspiring any confidence. The provision of anticipatory bail is laid to protect the innocent person from the false allegation. The discussion made above clearly shows that this is a fit case where anticipatory bail can be granted, though the alleged offences are of serious in nature. Hence, the order.

ORDER

1. Anticipatory Bail Application No. 1834 of 2022 stands conditionally allowed.
2. In the event of arrest of applicant/accused **Sachin Kisan Naik** in aforesaid C. R. No. 978/2022 for the offence punishable under sections 376(2) (n), 506 of The Indian Penal Code, 1860, registered with Kurar Police Station, Mumbai, he be released on his executing P. R. Bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) and on furnishing one or two surety/sureties 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 on 23.11.2022, 25.11.2022 and 28.11.2022 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) He is directed that he shall handover his mobile handset to the investigation officer and shall co-operate the investigation machinery with full mind.
3. The observation made in this order are restricted to this application

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ORDER

only and the Trial Court shall not get influenced by the observation of this Court.

4. Anticipatory Bail Application No. 1834 of 2022 is disposed of.

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

Date: 21.11.2022

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

Dictated on : 21.11.2022
Transcribed on : 21.11.2022
Checked & corrected on : 23.11.2022
Signed on : 23.11.2022
Sent to Dept. on :

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

Date : 23/11/2022

Time : 2.58 P.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.13)**

Date of Pronouncement of
JUDGMENT/ORDER

21.11.2022

JUDGMENT/ORDER signed by P.O. on

23.11.2022

JUDGMENT/ORDER uploaded on

23.11.2022