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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. ANTICIPATORY BAIL APPLICATION NO. 159 OF 2021

Bhagyashri Dilip Shidankar
Age : 26 Years, Occu. : Service,
R/o. : Marvad Peth, Baramati,
Tal. : Baramati, Dist. Pune.

... Applicant

Versus

The State of Maharashtra
Through Police Station : Shahupuri,
Satara, Dist. Satara.

... Respondent

Mr.Sushant Prabhune, Advocate for the Applicant.
Mr.N.B.Patil – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 2nd FEBRUARY, 2023

P. C. :-

1. This Court as per the order dated 19th January, 2021 has granted ad-interim protection from arrest in connection with C.R.No.399 of 2020 registered at Shahupuri Police Station, District : Satara for the offences punishable under Sections 500 and 506 of the Indian Penal Code, 1860 (45 of 1860) ["IPC"] and Sections 43(j) 66-C, 67 and 67-A of the Information Technology Act, 2000 (Act No.21 of 2000) ["IT Act"].

2. Today, I have heard learned Advocate Shri.Prabhune for the Applicant and learned APP for the Respondent-State as to whether this interim order is to be confirmed.

3. The Applicant and first informant Jaydev are the husband and wife. They married to each other on 24th October, 2019 at Satara.

Thereafter, till 29th September, 2020, both of them have cohabited together at various places including Satara, Pune and Baramati. The first informant left the matrimonial house at Baramati on 29th September, 2020. He was annoyed due to the harassment of the Applicant.

4. This FIR is lodged on the basis of two instagram posts ; one is dated 28th October, 2020 and another is dated 29th October, 2020. They were posted on Instagram account. Some obscene material is published pertaining to the mother of the first informant. The first informant got knowledge about the first post from his friend. That obscene message is sent by the friend on his Instagram account, whereas, in respect of post dated 29th October, 2020, he got knowledge from his another friend. It contains the similar obscene matter.

5. The first informant alleges that the Applicant has uploaded those obscene matter by using the user name and password of the first informant. Those are uploaded through one Samsung Note 9 mobile belonging to him and it was given by him to the Applicant. Whereas, Applicant contends that the sim card belongs to her only and in fact, she had given that sim card and mobile handset to the Applicant. She has expressed a fear about hacking of that Instagram account.

6. So far as the matrimonial life is concerned, according to the Applicant, in fact, she is incurring the entire financial burden and she has also helped the Applicant by giving finances. The extracts of google payment is annexed to the Application. There is also a contention that when there was first post of dated 28th October, 2020, why the Applicant has not blocked that Instagram account.

7. So, the issue is who has uploaded those obscene posts by using that

Samsung Note 9 mobile. During investigation, the police have collected those details. They have got the I.P. address and IMEI number which indicates the involvement of the Applicant. Whereas, Applicant contends that why the police have not investigated about that mobile after lodging of FIR on 13th October, 2020 that is to say who is using it and from where. The learned APP has got an explanation to offer and according to the investigation, that mobile is switched off after 2nd December, 2020.

8. Learned Advocate Shri.Prabhune also contended that the sections applied of IT Act are not warranted. Even the police have searched the residential place at Baramati and they have not found out that Samsung Note 9 mobile. There is also panchanama effected on 16th April, 2021 and its copy is tendered by learned Advocate Shri.Prabhune.

9. The issue is whether custodial interrogation of the Applicant is required. I think the custody of that mobile handset is very much relevant. Because, from the mobile handset, police can retrieve the photos from the memory with the help of forensic expert. The contention of the Applicant that first informant is possessing that mobile cannot be accepted at this stage. It is for the reason that tower location of that mobile at the material time was found at Baramati. Admittedly, at the relevant time, the Applicant was not residing there.

10. So, I think, the interim protection cannot be confirmed because that mobile is an important piece of evidence. Hence, the interim protection stands vacated and Application is dismissed.

11. There is a request for continuation of interim protection as it was in existence till today and to avail of one more chance before the Apex Court. It is opposed on behalf of the State. Let that interim protection to

continue for two more weeks with direction to the Applicant to attend Police Station on Monday and Friday from 10.00 to 12.00 noon and co-operate police as and when required.

(S. M. MODAK, J.)