

Nafisa Shaikh vs The State Of Maharashtra on 23 July, 2021

Author: Prakash D. Naik

Bench: Prakash D. Naik

4-Aba-1037-2019-With-Aba-1077-2019 .doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1037 OF 2019

Yasin Mohd. Abdul Khan ... Applicant

Versus

The State of Maharashtra ... Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1077 OF 2019

Nafisa Shaikh ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Sandeep Kumar Singh, Advocate for the Applicant in ABA No. 1037 of 2019.

None for the Applicant in ABA No. 1077 of 2019.

Ms. Veera Shinde, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JULY, 2021

PER COURT:

- Both the applicants are seeking pre-arrest bail in C.R. No. 133 of 2019 registered with Shivaji Nagar Police Station, Mumbai for offences under Sections 376, 313, 170 & 420 r/w Section 34 of Indian Penal Code (for short "IPC"). The First Information Report (for short 'FIR') was registered on 5 th March,

2019.

Sajakali Jamadar

1 of 8

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2. The case of the complainant in short is that, she was married to Abdul aziz Khan on 25 th December, 2007. The renovation work of house was given to cousin father-in-law (applicant in ABA No.1037 of 2019). The complainant/victim was subjected to sexual assault by the said applicant. Her photographs were clicked by him. The husband and in laws of the complainant were harassing her. Her husband had assaulted her and demanded Rs.1,00,000/- . The applicant - Yasin Khan called the victim at hotel under the pretext that he would give her amount of Rs.1,00,000/- . The victim was taken to the hotel room and sexually assaulted by the said applicant. In 2016. The victim filed the complaint against her husband under Domestic Violence Act at the instance of said applicant. The complainant/victim started residing with her parents since - 2017. Since the applicant Yasin Khan had subjected the victim to sexual assault, she wanted to file complaint against him with the Police. The complainant was introduced to applicant Nafisa Shaikh by some person to help her in lodging complaint against Yasin. Applicant-Nafisa Shaikh introduced the complainant to a person as Police Officer. The accused demanded money for

registering the FIR. On 5th October, 2018, the complainant saw both the applicants and Police Officer together in the hotel. On 6 th October, 2018, victim was taken to the hospital and pregnancy was

Sajakali Jamadar 2 of 8

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terminated. The accused demanded Rs. 5,00,000/- on 7 th October, 2018 for registering FIR against Yasin Khan. Subsequently, co-accused Uttam demanded Rs. 1,00,000/- on 8th October, 2018. The complainant parted an amount of Rs.5,00,000/- to Nafisa on 14 th February, 2018. Her complaint was not registered. Hence, FIR was registered by the complainant against both the applicants and co-accused Uttam on 5th March, 2019. During the course of investigation, Uttam was arrested and he has been charge-sheeted. In the charge-sheet it is alleged that the accused impersonated them as Policemen and induced the complainant to part with the amount.

3. Both the applicants had preferred an applications for anticipatory bail before the Court of Sessions. Initially, interim protection was granted to them and subsequently, the applications were rejected.

4. During the pendency of these applications, this Court has granted interim protection to the applicants vide order dated

14th June, 2019 and 26th June, 2019. The applicants were also directed to report Investigating Officer on stipulated dates.

5. Learned counsel for the applicant in ABA No. 1037 of 2019 submitted that the FIR is false. The allegations therein are

Sajakali Jamadar

3 of 8

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concocted by the complainant. There is inordinate delay in lodging the FIR. The allegations are vague. It is difficult to accept that the complainant would part an amount of Rs. 6 Lakhs for registering FIR. The complainant herself has stated that the applicant Yasin Khan had assisted her in lodging the complaint under the Domestic Violence Act against her husband. Although the complainant refers to termination of pregnancy. There is no evidence on record in that regard. The applicant Yasin Khan has not been attributed any role of demanding money from the victim. The applicant Yasin Khan has cooperated with the investigation. The affidavit was filed by the complainant which is annexed to this application stating that there was dispute between the complainant and applicant Yasin Khan which has been resolved. The statement of victim/complainant recorded under Section 164 of Cr.P.C. is contrary to FIR. Applicant Yasin Khan was assaulted by the complainant and her family members and N.C. was lodged by him on 7 th April, 2019. He had

also forwarded written complaint of assault to the police on 9th April, 2019. The charge-sheet has been filed against the arrested accuse. Custodial interrogation of the applicants is not necessary.

6. Learned APP submitted that the applicant Yasin Khan and applicant Nafisa Shaikh has been attributed specific overt act

Sajakali Jamadar

4 of 8

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in the FIR. The applicant Yasin Khan has sexually assaulted the victim. There is no reason to discard the statement of the complainant at this stage. There is no delay in lodging the FIR. Charge-sheet has been filed against arrested accused. Custodial interrogation of both the applicants is necessary. The applicant Nafisa Shaikh and the co-accused Uttam were involved in inducing the complainant to part with the amount of Rs.6 Lakhs under the pretext of registration of FIR against the applicant Yasin Khan.

7. I have perused the documents on record. The complainant has attributed alleged role of sexual assault to applicant Yasin Khan. The applicant Nafisa Shaikh is allegedly involved in demanding Rs.5 Lakhs from the complainant to help her in registering the FIR against the applicant Yasin Khan. It is also alleged that there were dispute between the complainant and her

husband and in laws. Complaint under Domestic Violence Act was lodged by her against her husband. The complainant has alleged that she was sexually assaulted by the applicant Yasin Khan. However, complaint does not mention the date on which the incident had occurred. Even the period of incident is not stated. It is alleged that after the victim was sexually assaulted, the applicant Yasin Khan called her in hotel under the pretext of giving money

Sajakali Jamadar

5 of 8

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and that she was taken in hotel room and sexually assaulted. The date or the period of said incidents are not reflected in the FIR. It is doubtful that victim would visit hotel at the instance of applicant Yasin Khan considering the alleged previous incident of sexual assault. According to complainant she started residing with her parents from 2017. In the complaint under Domestic Violence Act, however, she has alleged that since, 2014 she is residing in her parental home. Assuming that the complainant has left matrimonial home in 2017 and continued to stay with her parents, the FIR was lodged on 5th March, 2019. There is inordinate and unexplained delay. It appears that the complaint was lodged by Yasin Khan against complainant and her family members. Domestic Violence complaint was lodged by the complainant against her husband,

mother-in-law and sister-in-law on 10th May, 2016.

8. The applicant have also annexed the affidavit wherein it is stated that the complainant has resolved the dispute with the applicant Yasin Khan. Although, it is alleged that the applicant Nafisa Shaikh and others were involved in taking the victim to the Medical officer wherein her pregnancy was terminated, there is no evidence on record in that regard. It is difficult to believe that the complainant would part an amount of Rs.6 Lakhs to register the

Sajakali Jamadar

6 of 8

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FIR against Yasin Khan. The co-accused is arrested and he has been charge-sheeted. On perusal of the said charge-sheet, it is apparent that the statement of the complainant was recorded under Section 164 of Cr.P.C. The said statement is contrary to the FIR. The complainant has stated that she was ill treated by her husband and in laws. In 2013, the accused had subjected her to sexual assault and her photographs were clicked. She was threatened. She was called in the hotel in 2013 and again subjected to sexual assault. Video was recorded. From 2014, she started residing with her parents. From - September 2013 to 2017 the complainant was subjected to physical relationship. Subsequently, she was pregnant. She met Nafisa Shaikh. She was taken for medical examination and

her pregnancy was terminated. Thus, in the said statement it is alleged that the incident of sexual assault had occurred in 2013. Thus, the FIR was apparently lodged after a period of about 6 years. The statement also indicates that there was continuous physical relationship between them under the threat.

9. Considering the aforesaid aspects, both the applicants need not be subjected to custodial interrogation. Case for confirming the interim protection granted by this Court is made out.

Sajakali Jamadar

7 of 8

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10. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application Nos. 1037 of 2019 & 1077 of 2019 are allowed;

(ii) In the event of arrest of the applicants in connection with in C.R. No. 133 of 2019 registered with Shivaji Nagar Police Station, Mumbai, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) The applicants shall attend the investigating officer as and when called for till filing of charge-sheet.

(vi) Anticipatory Bail Applications are disposed of accordingly.

Sajakali Jamadar

8 of 8