

ORAL ORDER

This is an application for the grant of anticipatory bail under section 438 of the Cr.P.C., in connection with C.R. No. 118 of 2022, registered with Malvani Police Station, for the offences punishable under sections 211, 500, 504, 509, 506(II) read with section 34 of the Indian Penal Code and section 67 of the Information Technology Act.

2 Perused the application, the say filed thereon, the documents relied upon in support thereof and the record.

3 Heard the learned counsel for the applicants and the learned Special Public Prosecutor for the State.

4 It is submitted by the learned counsel for the applicants that the alleged offence is not serious. ADR was closed, as suicide. As the applicants want justice, the applicant no.1 had held a press conference on the basis of the knowledge gathered by him from various sources. At the most, the case of defamation could have been filed. This is a politically motivated case. It is not a fit case for custodial interrogation. The applicants co-operated the police. Per contra, it is submitted by the learned Special Public Prosecutor that the applicants have been causing harassment to the family of the deceased. The matter is serious. ADR has been filed, after investigation. The applicants made defamatory statements on media. The applicants are not replying the questions put to them, though they are bound to reply, as regards their alleged knowledge. As the victim was named in public, the offence under section 228-A of the IPC is also attracted. As the source of information is not



disclosed to the police, the applicants are not possessed of the alleged information. False imputations are made in respect of the deceased in various media channels, by the applicants, who are responsible persons. Custodial interrogation is necessary for investigation. The applicants are not likely to co-operate the police. There are criminal antecedents against them. They are threatening the police, also. They are not entitled to anticipatory bail. He placed his reliance upon the following authorities :

Savitri Agarwal and Others Vs State of Maharashtra and Another [2009 (80) AIC 116], wherein it was observed by the Hon'ble Apex Court that the power to grant anticipatory bail has to be exercised, only in the cases of false implication, or when the accused is not likely to abscond or otherwise misuse his liberty.

Nitesh Narayan Rane and Anr. Vs The State of Maharashtra in Anticipatory Bail Application No. 2 of 2022, decided by the Hon'ble High Court of Judicature at Bombay on 17th January 2022, wherein it was observed by the Hon'ble Bombay High Court that the court needs to consider whether there is the need of custodial interrogation and whether there is the likelihood of misuse of protection, looking to the criminal antecedents, if any. Reliance was placed by his Lordship upon an authority in the case of Siddharam Mhetre from the Hon'ble Apex Court, wherein the parameters laid down included the nature and the gravity of the accusation, the role of the accused, the existence of criminal antecedents, the possibility to flee from justice, etc.

Shri Gurbaksh Singh Sibbia and Ors. Vs State of Punjab [(1980) SCC (2) 565], wherein the Hon'ble Apex Court laid down that the power under section 438 of the Code of Criminal Procedure is



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of an extra ordinary character, which must be exercised sparingly, in exceptional cases only.

Nimmagadda Prasad Vs Central Bureau of Investigation in Criminal Appeal No. 728 of 2013, decided by the Hon'ble Apex Court on 9th May, 2013, wherein bail was refused, without expressing any opinion on the merits of the case.

State Rep. by the C.B.I Vs Anil Sharma in Appeal, decided by the Hon'ble Apex Court on 03rd September, 1997, wherein the Hon'ble Apex court observed that the effective interrogation of the suspected person is of tremendous advantage. In that case, there were the allegations of acquisition of wealth, exceeding Rs. 16,00,000/-, against the known sources.

Harjit Singh Vs Inderpreet Singh @ Inder and another in Criminal Appeal No. 883 of 2021, decided by the Hon'ble Apex Court on 24th August, 2021, wherein the factors, like the nature of accusation, the severity of punishment in case of conviction, reasonable apprehension of tampering with witnesses and prima-facie satisfaction of the court in support of the charges were emphasized, while considering the question of grant of bail.

5 The learned counsel for the intervener/first informant assisted the police, by making written submissions, which are in consonance with the contention of the informant and various submissions advanced at the bar at the behest of the State machinery. In addition thereto, it came to be emphasized by the learned counsel that the applicants are screening the offenders, if any.



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6 As per the FIR, lodged by the mother of a deceased girl, the deceased used to remain in depression, on account of certain financial losses. The deceased ended her life, under the influence of alcohol, by committing suicide, by jumping from a building. The allegations levelled against the applicant no.1 are to the extent that on 19/02/2022, he addressed a press conference, wherein he made a categorical statement that the deceased was raped and killed. The allegations against the applicant no.2 are to the extent that he published the said rumor on social media. Consequently, the deceased as well as the informant came to be defamed in the society. It is further alleged that the gossip as well as the gestures from the public at large, is the consequence thereof, resulting into the outraging of the modesty of the informant. She further alleged that her life was put to danger, as the consequence thereof.

7 At the outset, this court fails to understand prima-facie, as to how certain sections were invoked and added by the police, like sections 509 and 506 (II) of the Indian Penal Code and section 67 of the Information Technology Act, on the strength of the allegations levelled. The applicants are said to have been interrogated for considerable duration, as sought to be impressed upon, by the learned counsel for the applicants. The State machinery engaged the services of Special Public Prosecutor. These factors, apart from some other factors, which are not being dealt with herein, prima-facie depict an unprecedented manner of dealing with the alleged crime, by the State machinery. That leads this court to find some substance in the submissions canvassed at the instance of the applicants, that there has

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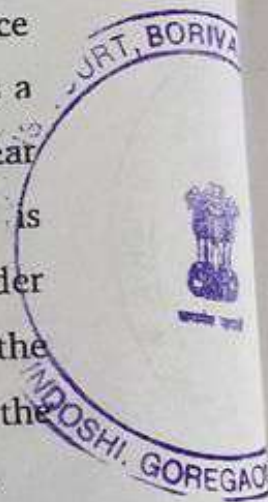
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been some political intervention.

8 Article 14 of the Constitution of India talks of equality before the law, which is a fundamental right enshrined therein. Article 21 of the Constitution emphasized upon the personal liberty of an individual, as a fundamental right. The State machinery is not expected to deprive any person of his personal liberty, save as otherwise provided for, by an express just, fair and reasonable procedure. The police machinery or any other investigating agency is not expected to act as a tool in the hands of Government, but is expected to work without fear and favour, while discharging its function of investigation. It is unfortunate that the investigating agencies have to function under Governments. There is the need for the State, to ensure that the investigating agency becomes totally independent, so as to reach the goal of justice, enshrined in the Constitution of India. Be it as it may.

9 Looking at the allegations, in the case at hand. The allegations levelled primarily are relating to the publication of defamatory statements. The publication thereof is not in dispute. The State machinery can, even otherwise, prove the publication of those statements, by accessing the concerned media resources.

10 The nature of the allegations does not ipso-facto speak of the gravity of the alleged crime, as sought to be impressed upon, notwithstanding the effect thereof vis-a-vis the informant or the deceased. Indisputedly, the applicants are liable to be dealt with in accordance with law, in relation thereto. However, notwithstanding the



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same, the custodial interrogation of the applicants is not at all warranted, in relation to those allegations.

11 What is sought to be pressed into service, on behalf of the learned Special Public Prosecutor, is that the applicants should have disclosed the source of their knowledge to the police. It, thus, appears that the police are seeking to interrogate the applicants, by seeking their custodial interrogation, as regards the source of information, that the deceased was raped and murdered. If the deceased was raped and murdered, the present applicants are not, indisputedly, the alleged culprits thereof, nor are said to be accused of having committed the said crime. The only reason sought to be put fourth for their custodial interrogation, in relation thereto, is the disclosure of the possession of the alleged knowledge. Thus, the custodial interrogation, as sought to be paid attention to, is either as the witnesses to such an incident of rape and murder, or as the persons gathering hearsay knowledge in relation thereto, and by no stretch of imaginations, as the persons accused of the same. The alleged abstention from answering the questions by the applicants, in relation to some other alleged crime, cannot amount to their non-co-operation, qua the crime in question.

12 Insofar as the existence of criminal antecedents qua the applicants are concerned, it is no more res-integra that the existence of criminal antecedents cannot per se lead to the deprivation of one's personal liberty. The factual matrix, that has to be paid attention to, must depict the gravity of the crime as well as the nature of crime, warranting the deprivation of personal liberty, by way of custodial

interrogation. If the applicants are screening the offender, it would entail necessary legal action, de hors the allegations, this court is seized of. The disclosure of the name of the victim of rape also entails necessary legal consequences, but does not unveil gravity, sensu stricto.

13 The factual scenario, as unveiled hereinabove does not reveal the gravity of the crime, in the eyes of law, though the applicants may be liable to be dealt with, in accordance with law.

14 In the light of the foregoing observations, as the custodial interrogation of the applicants is not sine-qua-non, for proceeding with proper investigation, they are entitled to anticipatory bail upon certain conditions. Thus, I proceed to pass the following order :

ORDER

1) The application for the grant of anticipatory bail is hereby allowed, and it is hereby directed that in the case of arrest of the applicants 1) Narayan Tatu Rane and 2) Nitesh Narayan Rane, in connection with C. R. No. 118 of 2022, registered with Malvani Police Station, for the offences punishable under sections 211, 500, 504, 509, 506(II) read with section 34 of the Indian Penal Code and section 67 of the Information Technology Act, they be released on bail, on their executing PR Bonds of Rs. 15,000/- each (Rupees Fifteen Thousand Only), with one or more sureties in the like amount each, on the conditions that the applicants shall not tamper with the prosecution witnesses in any manner and shall cooperate with the investigating agency.

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