

FARAD CONTINUATION SHEET

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.****Criminal Application (aba) No. 639 of 2014**

Gautam s/o Aadkuji Gedam

v.

State of Maharashtra, thr. P.S. Warora, Distt. Chandrapur

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. A.S. Ambatkar Advocate for the applicant.
Mr. S.M. Bhagade, APP, for respondent.

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Coram : S.B. Shukre, J.**Date : 22nd December, 2014.**

Heard.

2. On the basis of a complaint of 15 years old girl studying in VII standard in Zilla Parishad School, Yensa, Tahsil Warora, District Chandrapur, that police station Warora has registered offences punishable under Section 354-A of Indian Penal Code and under Sections 7, 8, 9(F) and 10 of Protection of Children from Sexual Offences Act, 2012.
3. The allegations made against the applicant are that in the afternoon of 27.11.2014 this applicant, who was engaging a class of English subject went near

the victim girl when he found that she was unable to recite the table and outraged her modesty by inappropriately touching her. It has been alleged that this was done by the applicant in the class and was in the presence of all other girls and boys, all of whom were his pupils. The incident was narrated by the victim girl to the other teacher and then also to the Head Master and other persons present in the school. Later on, on 01.12.2014 a report was lodged against the present applicant.

4. According to learned counsel for the applicant, there is a great delay in lodging of the report and, therefore, prima facie, a doubt arises about truthfulness of the allegations made against the applicant. The learned APP, however, disagrees and states that the conduct of the girl, as mentioned in the FIR, is natural and there is also an explanation provided in the FIR itself and, therefore, nothing adverse can be found in belated lodging of the FIR.

5. The learned APP is right in said submission. Prima facie, the explanation for the delay in registering this case can be read from the facts and circumstances narrated in the FIR itself. At least, at this stage of investigation, this explanation would be sufficient to say that it does not create any prima facie doubt about the genuineness of the allegations made in the FIR.

6. Learned counsel for the applicant further submits that there is a significant fact which emerges from the FIR creating a doubt about the whole story of

the victim-girl. According to him, the victim-girl never informed this incident to her mother, rather, she told it to her maternal uncle, not a right person for narrating such kind of incident, and this would be something which would create a doubt about the intentions of the prosecutrix. The learned APP submits that it would be too early to express a doubt about the allegations only because the prosecutrix, as per the FIR, first narrated the incident to her maternal uncle instead of her mother.

7. It must be borne in mind that this is a case for consideration of an application filed under Section 438 of Code of Criminal Procedure and the investigation has just started. Therefore, there may be many facts and circumstances which are yet to be probed by the Investigating Officer and which may throw light on this aspect of the case in a meaningful way and, therefore, as rightly submitted by the learned APP, it would be too early to draw any adverse inference from the conduct of the prosecutrix in choosing her maternal uncle to be the first confidante rather than her mother for sharing and for narrating the incident to him. In fact, the incident was first shared by her not with her maternal uncle but with one Nikhade teacher who had entered the class room after the period of the applicant was over and thereafter it was narrated to "Madam" of the school, who appears to be the Head Mistress or class teacher. The FIR also discloses that the incident was told by the prosecutrix to other persons as well who were present in the school. The

statements of the witnesses disclose that the incident was disclosed not only to various staff members of the school but also to friends and classmates of the prosecutrix. Some of the classmates of the prosecutrix appear to be eye witnesses to the incident as they have made statements in complete support of the allegations made by the victim-girl against the applicant. With such narration of incident to so many persons and with the incident itself being witnessed by others, prima facie, nothing secret had remained about it and, therefore, nothing adverse could be seen in the prosecutrix not disclosing the incident first to her mother. That apart, at this stage, it is also not known with any certainty as to whether or not the prosecutrix had immediately shared the incident with her mother when she reached home as FIR is silent about this aspect and this could be a matter of further investigation. Therefore, at this stage, merely because the FIR is silent on this aspect, no adverse inference can be drawn that the prosecutrix must not have told this incident to her mother immediately on her reaching home. Then, it must also be understood that the prosecutrix is a school going girl and would not know much about the rules which adults follow while interacting with each other and which require that since such incidents involve element of "shame", they are to be shared first between "girls or women" only. A school girl of tender age is too young and innocent to understand these things.

8. Thus from the above discussion, it would be clear that there is a prima facie case made out against the applicant for the offences registered against him. Then would come the question of custodial interrogation of the applicant in this case and, as rightly submitted by the learned counsel for the applicant, it does not appear necessary that the applicant would be required to be subjected to custodial interrogation. But, it is now well settled law, as held in catena of decisions of Hon'ble Apex Court, that need for custodial interrogation of the applicant and other similar considerations are not the only parameters that must be considered by the Court while exercising its discretion regarding grant/denial of the bail. Some of the other relevant considerations which must weigh with the mind of the Court are – nature of accusations, evidence available to support the accusations, seriousness of the punishment imposed for the offence alleged against the accused, seriousness of the crime, behaviour of the accused, circumstances peculiar to the accused, possibility of accused fleeing away from justice, if released on bail, possibility of tampering with prosecution witnesses, if released on bail, impact of the bail on the society and larger public interest and similar other considerations. A useful reference may be made to the cases of **Sanjay Chandra v. C.B.I.**, reported in **(2012) 1 SCC 40** and **Ranjit Singh v. State of M.P. & ors.** reported in **2013(12) SCALE 190.**

9. On the other parameters, as laid down in afore-

stated cases, I do not think that the applicant could be held to be entitled to be released on bail. In this regard, I feel that position of the applicant and the behaviour prima facie exhibited by the applicant are most relevant as they would have great impact on the reputation of the school as well as discipline in the school. Applicant is a teacher who is supposed to practice what he teaches and who is supposed to be laying down an example of himself for model behaviour before his pupils. If the applicant, inspite of being a teacher, prima facie, behaves the way he has done in this case, his release on bail would have its adverse impact on the pupils in the school, its reputation and discipline and also on the larger interest of the society. Besides, the applicant being a teacher, is in a dominant position to influence the pupils and, therefore, granting him anticipatory bail is likely to affect fair investigation and also resulting in tampering of prosecution witnesses. That apart, there is a prima facie evidence against the applicant having committed similar crime in the past in respect of which he had tendered an apology to the villagers. Thus, as already stated, the applicant cannot be considered to be entitled to be released on bail on these parameters.

10. In the result, the application deserves to be rejected and it is accordingly rejected.

11. At this stage, learned counsel for the applicant submits that some more time be given to the applicant to enable him to approach the Hon'ble Apex

Court in the matter and, therefore, prays for continuation of interim protection granted to him on 12.12.2014. The request is opposed by the learned APP. However, considering the fact that the applicant has been under interim protection since 12.12.2014, I am of the view that continuation of the same by one more week may not cause any prejudice to the investigation in this case. Therefore, it is extended till 30.12.2014.

Hamdast/authenticated copy allowed.

Judge

/TA/