

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4379 OF 2015

Shaikh Akef s/o Shaikh Farooq,
Age-29 years, Occu:Teacher,
R/o-Shahenshah Nagar,
Tq. & Dist-Beed

...APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Police Station Peth Beed.

...RESPONDENT

...
Mr. G.K. Naik-Thigle Advocate for Applicant.
Mrs. M.S. Patni, A.P.P. for Respondent-State
Mr. A.D. Ostwal Advocate assist to A.P.P.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 23RD SEPTEMBER, 2015

ORAL ORDER :

1. This is an Application for anticipatory bail filed by the Applicant - Shaikh Akef s/o Shaikh Farooq who is accused in Crime No.61 of

2005 registered against him in Peth Beed Police Station. The offence registered is under Section 354(A) (D), 506, 34, 376(1), 376(2) of the Indian Penal Code and under Sections 19, 21(1) of the Protection of Children from Sexual Offences Act.

2. This matter was kept for arguments on 21st September 2015 and thereafter adjourned to 22nd September 2015. Yesterday i.e. on 22nd September 2015 learned counsel for the Applicant insisted for adjournment for eight days claiming that he was busy in other matters and could not prepare himself. He stated that the matter may be adjourned and if the Court feels, the interim protection may be vacated. However, the request was not accepted and when the learned Advocated insisted that he is not prepared, the A.P.P. was called upon to argue the matter. Thereafter the learned counsel for Applicant made his submissions and stated that he wanted to give some more Rulings. As such the matter was kept today for

submitting Rulings. Today the learned counsel has further argued the matter and claimed that there is a counter F.I.R. No.62 of 2015 pending between the parties and calling of those case papers is necessary as it would disclose that on the concerned day of 29th June 2015 the Applicant was attacked by the father and relatives of the prosecutrix, because of which the Applicant was required to be taken to Beed Civil Hospital under M.L.C. and was treated there at 9.30 a.m., whereafter the present impugned F.I.R. No.61 of 2015 came to be filed in the afternoon.

3. It is stated on behalf of the Applicant that the complainant (name of the victim is withheld and she is referred as "prosecutrix/victim"), lodged the F.I.R. bearing Crime No.61 of 2015 on 29th June 2015 under Section 354, 506 and 34 of the Indian Penal Code (for short "I.P.C.") and under Sections of Protection of Children from Sexual Offences Act. Subsequently, the offences

under Section 376 of I.P.C. were added. The Applicant had moved the Sessions Court for anticipatory bail, which came to be rejected. The F.I.R. No.61 of 2015 is counter blast of the F.I.R. lodged by one Sayyed Jahed Husen, Head Master of Milat Urdu Primary School, where Applicant is working as teacher. The said offence is registered by the police against brother of complainant and the crime was registered on account of assault. The Applicant was shifted to hospital at Beed and was treated there and from Beed he was shifted to Aurangabad for further treatment. The Applicant claims that the impugned F.I.R. No.61 of 2015 filed against him is concocted. The victim had actually taken transfer certificate from Milat Urdu Primary School nearly one year back and she had no concern with the school any more. The document in that regard Exhibit D shows that victim left Milat Urdu Primary School on 8th August 2014.

4. The Advocate stated for the Applicant that on 29th June 2015 the Applicant and Head Master of the school were beaten up and the Applicant was shifted to the hospital at Beed. Learned counsel pointed out the medical papers of the Applicant in this regard from page No.45 of the compilation. It is stated that the Head Master of the School filed F.I.R., copy of which has been filed. The F.I.R. filed by the victim claims that she was molested at the Global Coaching Classes. The counsel submits that Applicant had no concern with said Global Coaching Classes and in the year 2011 he had resigned from said Coaching Classes when he was appointed in Milat School. It is stated that in the impugned F.I.R. No.61 of 2015 earlier there were no allegations made that victim was raped but later on when father of the victim was released on bail on 13th July 2015, only there after further allegations were made to add Sections claiming that the victim had been raped. The Applicant was involved in the offence under

Section 376 of I.P.C. only by way of supplementary statement. It is stated that the Applicant has already given his address and other details to the police after he was given interim protection in this matter and he has already conveyed his willingness to co-operate. Learned counsel relied on the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, reported in (2011) 1 Supreme Court Cases 694**. The counsel referred to Paragraphs 89, 90 and 119 of the Judgment to submit that the Judgment shows the parameters required to be applied while considering the matters of anticipatory bail. Reference was made to Paragraphs 113 and 114 of the Judgment to submit that arrest of the citizens should be last resort. It is stated that Applicant is ready to stay outside the District but may be granted anticipatory bail.

5. Learned counsel for the Applicant submitted that the grounds on which anticipatory

bail is claimed are that:

(i) There has been delay in filing of the F.I.R. as the period mentioned in the F.I.R. is of more than one year as regards the various instances alleged to be of outraging modesty.

(ii) In the first instance, no allegations of rape were made.

(iii) The impugned F.I.R. was filed as a counter blast because of the incident in the morning when the Applicant as well as the Head Master of the school were beaten.

(iv) The Applicant has been falsely implicated.

(v) The Applicant has co-operated in investigation and is ready to co-operate and is thus entitled for anticipatory bail.

(vi) There is dispute in the management of the school, which wants to get rid off the Applicant and thus the present offence has been filed to pressurize the Applicant.

6. Learned counsel for the Applicant further relied on the case of **Bhadresh Bipinbhai Sheth vs. State of Gujrat and another, in Criminal Appeal Nos. 1134-1135 of 2015, Judgment of the Hon'ble Supreme Court dated 1st September 2015**, copy of which has been tendered. It is submitted that in this Judgment the Hon'ble Supreme Court referred to the earlier principles of law applicable in the matters relating to anticipatory bail.

7. Per contra, learned A.P.P. submitted that the prosecutrix, hardly 14 years of age and a child, who was under trauma when situation came to inform the parents, earlier did not disclose about she being raped, but later on she gave the information due to which Section 376 of I.P.C. and

other Sections were invoked. According to the learned A.P.P., last incident is of 26th June 2015 and thus there was no delay. According to the A.P.P., the Applicant, a teacher had been outraging modesty of a student and even raped her. She was threatened with dire consequences that her brother would be killed and was also threatened by knife that she should not not disclose the incident. The learned A.P.P. submitted that the Applicant had threatened the victim that he has made video of her and he will put the same on social media and she should not disclose the incident to anybody. The A.P.P. submitted that medical certificate of the victim is already on record, which shows that there were signs suggestive of use of force and forceful penetration of vagina and sexual intercourse could not be ruled out. The A.P.P. refers to statement of one Amjad, director of Global Academy, who submit that on the day concerned the victim was undergoing course at Global Academy, and the

Applicant, who is relative of the director concerned, was present at the institute. Statement of the victim has been recorded under Section 164 of the Code of Criminal Procedure. The A.P.P. pointed out case-papers where also the victim has, in supplementary statement, made allegations of forceful sexual intercourse by the Applicant. The A.P.P. submitted that the video clips, mobile handset, tab, knife etc. by which the victim was threatened, are required to be seized and custodial interrogation is necessary. There are no grounds raised in the Application that there was any dispute in the management of the school. According to the A.P.P. even if it was claimed that there was any dispute, it is unthinkable that parents of a young girl like the present victim would come forward to make such serious allegations which would put her future life in jeopardy. The A.P.P. submitted that the Application deserves to be rejected.

8. I have gone through the material available on record. The affidavit in reply of the API, Police Station Peth, Beed, claims that the victim was got examined and the doctor has opined that, on history and clinical examination there are signs suggestive of use of force and forceful penetration of vagina, and sexual intercourse could not be ruled out. The affidavit refers to statement of Amjad Jahagirdar, director of Global Academy, disclosing presence of the victim and the Applicant on 26th June 2015 in the premises of the said academy. The affidavit claims that rather the complaint filed against the relatives of the victim is counter blast to the present allegations. The affidavit says that the video clip of victim minor girl, knife, mobile handset, hard disk, Tab and Mobile are yet to be recovered from the custody of the Applicant and his custodial interrogation is necessary.

9. The medical papers relied on by the

prosecution are being doubted by the learned Advocate for Applicant by stating that those are got up documents which show that medical examination was conducted on 24th July 2015 at Aurangabad and not at Beed.

10. The Applicant has filed affidavit dated 3rd September 2015 claiming that initially there was no allegations under Section 376 of I.P.C. but they were made subsequently after the release of father of the prosecutrix on bail. It is claimed that the Applicant is being roped in the offence without there being material. Applicant has claimed that he had no concern with Global Coaching Classes and he has resigned from the said Classes from June 2011 itself, regarding which he has filed document. Applicant claims that he is ready to co-operate in the investigation.

11. In the Judgment of **Siddharam Satlingappa Mhetre**, cited supra, the Hon'ble Supreme Court

observed that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. The Hon'ble Supreme Court has referred to the following factors and parameters which can be taken into consideration while dealing with the anticipatory bail:-

"The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made, only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern.

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair

and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

12. Keeping the above parameters in view, it is necessary for me to balance the interest of society in free, fair and full investigation and the rights of the Applicant. When I go through the material available on record, I find substance in the submissions made by the learned A.P.P. that a young girl like the victim and her parents would not falsely make charges as are being seen in the present matter. There is medical certificate

supporting the averments and claims made by the victim. It is unthinkable that only because there is some dispute in the management of the school where the Applicant is working as a teacher, the student and her parents, who is no more in the school, would come forward and make such allegations. Facts of the matter show that victim was violated when she was in school and Applicant followed her up when she joined Global Coaching Classes. Delay by itself in such matters would not be ground to claim that the F.I.R. is imaginary or concocted. In such matters, there is always hesitation in the mind of the victim herself who may not disclose her trauma till it becomes unbearable. As regards the claim that present F.I.R. was filed as counter blast and the incident relating to assault on the Applicant took place in the morning itself on the day concerned and the Applicant was rushed to the hospital under M.L.C. at 9.30 a.m., these would be matters which would have to be looked into at the time of trial.

F.I.R. in Crime No.62 of 2015 refers to the incident of assault where it is claimed that the relatives of the victim were searching for the Applicant. F.I.R. in Crime No.62 of 2015 (Page 35 of the compilation) rather mentions that the incident of assault took place for no reason. Facts of present matter may have triggered that incident but it would be relevant in that matter. Important here is that, only because of that incident of assault one cannot jump to conclude that present incident is imaginary.

13. Although the Applicant has offered that he is ready to co-operate in the investigation, looking to the affidavit of API and the facts involved, I do not find that this is a fit case where anticipatory bail should be granted. The custodial interrogation of the Applicant appears to be necessary. There is no substance in the Application. The Application is rejected.

14. At this stage, the learned counsel for the Applicant states that the interim protection granted in matter may be continued for another six weeks, under Section 482 of the Code of Criminal Procedure. When the Application itself is disposed of, I do not find any reason to continue the interim protection, looking to the facts of the present matter.

[A.I.S. CHEEMA, J.]

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