

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICAITON NO. 5931 of 2017.**

SHAIKH BABU S/O SHAIKH FARID

VERSUS.

STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicant : Mr. S.S. Kazi.
APP for Respondent/State : Mr. K.N. Lokhande.

CORAM : V.L. ACHLIYA, J.

DATE : 21st November, 2017

ORAL ORDER:

1. The applicant apprehending arrest in connection with Crime No. 161/2017 registered at Ramtirth Police Station, District Nanded, for the offences punishable under sections 363, 376(2)(f)(i)(j) and (n), 506 read with section 34 of the Indian Penal Code and under section 4 and 6 of the Protection of Children From Sexual offences Act, has preferred this application seeking anticipatory bail.

2. Heard learned counsel for the applicant and the learned APP for the respondent/State. Perused the papers of investigation.

3. In short it is the contention of the learned counsel for the applicant that in the first information

report lodged by the informant i.e. father of the prosecutrix, the name of the applicant is not mentioned nor any role has been attributed to him in commission of the offences. The allegations made in the FIR are primarily made against Sayyad Maheboob, who alleged to have enticed the prosecutrix from the lawful custody of informant. The applicant being the brother-in-law of the prime accused, falsely implicated in the case. He submits that, the applicant has cooperated in investigation. Pursuant to the direction given by this Court, the applicant appeared before the investigating officer. He submits that, the charge under section 376 of the Indian Penal Code is added during the course of investigation, pursuant to disclosure made by the prosecutrix that accused No. 1 committed forcible sexual intercourse with her. He submits that, as per the version of the prosecutrix, no act amounting to offence of rape punishable under section 376 of the Indian Penal Code is attributed to applicant. If the statement of prosecutrix is taken into consideration at the most offence under section 363 of the Indian Penal Code can be attracted against applicant, for which maximum punishment is provided is sentence not more than seven years. He submits that for the purpose of

conducting investigation, the custodial interrogation of applicant is not required.

4. On the other hand the learned APP submits that during the course of investigation the statement of victim girl was recorded. She has categorically stated that on the day of incident the applicant was accompanied with accused No. 1 Sayyad Maheboob and both of them forced her to sit in a Bolero Jeep. The vehicle i.e. Bolero jeep used in the commission of offence, is yet to be seized. Therefore urged to reject the application.

5. On due consideration of the submissions advanced in the light of overall facts of the case, nature of the allegations made against the applicant, I am of the view, the case is made out to entertain the application. The investigation in the case practically over. For the purpose of seizure of the vehicle, custodial interrogation of the applicant is not required. The jeep belongs to person other than applicant. If we consider the role of the applicant, then it is confined to assist the accused No. 1 in taking away the victim girl from the lawful custody of her father. Hence the following order.

ORDER

1. Application is allowed.

2. In the event of arrest of the applicant in connection with Crime No. 161/2017 registered at Ramtirth Police Station, District Nanded, for the offences punishable under sections 363, 376(2)(f)(i)(j) and (n), 506 read with section 34 of the Indian Penal Code and under section 4 and 6 of the Protection of Children From Sexual offences Act, the applicant be released on his furnishing bail in the sum of Rs. 25,000/- with one surety in the like amount, on following condition.

(i) Applicant shall appear before the Investigating officer as and when directed by the investigating officer.

7. Criminal application stands disposed of in above terms.

(V.L. ACHLIYA, J.)

mkd/-