

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2117 OF 2017

1) MAFATLAL DHULABHAI MAKWANA)
2) PRAVINKUMAR MAFATLAL MAKWANA)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Omprakash Dubey, Advocate for the Applicants.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 5th DECEMBER 2017

P.C. :

1 Applicants/accused, who are respectively father and brother of the main accused Siddharajkumar Makwana, by this application are seeking pre-arrest bail in Crime No.267 of 2016, registered with Juhu Police Station, Mumbai, for offences punishable under Sections 366A, 376, 377, 342, 368, 471, 406, 420, 506(ii) read with 34 of the Indian Penal Code (IPC) as well as under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

2 Heard the learned advocate appearing for applicants/accused as well as the learned APP. The learned APP opposed the application by contending that both applicants/accused are indulged in forgery of Photo Identity card as well as Aadhar card of the victim female child. The learned APP further argued that the minor female victim of the crime in question has assigned specific role to both applicants/accused and therefore, they are not entitled for pre-arrest bail.

3 I have considered the rival submissions and also perused the entire charge-sheet. The First Information Report (FIR) of the subject crime is lodged by Pushpa Nayak. She reported that the minor female victim, aged about 17 years, was missing from the house.

4 Ultimately, the minor female victim, who is the alleged victim of the crime in question, was traced out. Her statement is recorded by the Investigator. It is seen from her statement that while residing with a woman named Jinu bhabhi. She developed

acquaintance with main accused Siddharajkumar Makwana. It is seen from the FIR that the minor female victim had developed love relations with him and at his instance, she had eloped, and proceeded towards Gujarat on 24th April 2016. She told the inmates of the house that she is going out with her friend Pranita and eloped from the house. By bus she proceeded towards Ahmedabad. On the way, main accused Siddharajkumar Makwana as well as present applicant/accused Pravinkumar joined her. The alleged victim of the crime in question further reported that then she stayed at the house of the present applicants/accused with Siddharajkumar Makwana. As per her version, she was forced to marry with main accused Siddharajkumar Makwana. Her consent was obtained by misrepresentation by both applicants/accused as well as co-accused Siddharajkumar Makwana. Rest of the averments are not directed against present applicants/accused. The alleged victim of the crime in question averred that her Aadhar card was forged by accused persons. She is not disclosing the mode and manner of the alleged forgery.

5 It is seen from the statement of the minor female victim of the crime in question, who has stated her age to be 17 years and 2 months, that she herself had eloped from the house where she was residing and joined the company of co-accused Siddharajkumar Makwana as well as present applicants/accused. Role attributed to present applicants/accused is to the effect that they had cheated her to marry co-accused Siddharajkumar Makwana.

6 Considering the nature of allegation against present applicants/accused as well as the fact that the entire investigation of the crime in question is over leading to filing of the charge-sheet, I am of the opinion that custodial interrogation of both applicants/accused is not warranted. Interest of the prosecution can be secured by directing them to attend the Investigator. Therefore, the order :

ORDER

i) The application is allowed.

- ii) In the event of arrest in Crime No.267 of 2016, registered with Juhu Police Station, Mumbai, for offences punishable under Sections 366A, 376, 377, 342, 368, 471, 406, 420, 506(ii) read with 34 of the IPC as well as under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act), applicants/accused shall be released on bail on their executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount, by each of them.
- iii) As a condition of this order, applicants/accused shall attend the concerned Police Station on 13th December 2017, 15th December 2017 and 19th December 2017, between 11.00 a.m. and 1.00 p.m. till filing of the charge-sheet, and shall co-operate the Investigator in the investigation of the crime.
- iv) The applicant / accused shall not tamper with the prosecution evidence.

- v) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

- vi) The application is disposed of.

(A. M. BADAR, J.)