

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2640 OF 2016

Ishaque Ali Hussain Ansari

.....Applicant

V/s.

The Senior Police Inspector and another

....Respondents

Mr. Mateen Shaikh Advocate for Applicant.

Mr. M. G. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 17th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 18/08/2016 in crime no. 425 of 2016 registered at Dharavi Police Station for offence punishable under sections 354 of the Indian Penal Code and section 8, 10 and 12 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the prosecution that on 18/08/2016, one Mrs. Sarika Salunkhe who is working as a counselor in the institution namely 'Sneha

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Sanstha' lodged a report at the police station alleging therein that on 16/08/2016, one woman namely Atmadevi had approached the institute and had informed that her neighbour's daughter namely Ms. 'X' is being sexually abused by her biological father. To verify the genuineness of the complaint, Mrs. Salunkhe summoned the girl to the office wherein Ms. 'X' had disclosed that a month ago when she was at home, her father had asked her brothers to leave the house and thereafter, he had sexually abused her. On the basis of the said report, crime no. 425 of 2016 was registered.

3) The first informant had also called upon the mother of the victim i.e. wife of applicant and she had disclosed to the first informant that she had informed Atmadevi that she is being harassed and ill-treated by her husband and also that her husband attempted to molest her minor daughter. Atmadevi had informed Ameena Begam that they both should come to the office for conciliation. It appears that Atmadevi without waiting for couple to approach the office had informed Sneha Sanstha about the same. The Statement of the victim was recorded in question and answer form and she had reiterated that she has been sexually abused by her father. The statement of the victim was

recorded under section 164 of Code of Criminal Procedure, 1973 and at that time, she had disclosed that her father has not done anything wrong with her.

4) The learned counsel for the applicant vehemently submitted that residents of Welfare Society Rajiv Gandhi Nagar have lodged a report against Atmadevi alleging therein that she has forced and coerced several vulnerable girls to lodge reports against particular people. That under the garb of social work, she has created chaos in the said area. It appears from the records that on 21/09/2016, Rajiv Gandhi Nagar Rahivasi Welfare Society has lodged reports against Atmadevi to various authorities. A specific report is lodged that the victim in the present case was also forced to lodge a false report against her own father.

5) This Court had asked the learned APP to request investigating agency to inquire into the same. Today a report is filed stating therein that Sneha is a society for nutrition, education and health action. It is a registered society. It is a public trust and the certificate is issued in the name of Dr. Mrs. Armida Fernandes. It is reported that at the behest of the said society, crime no. 127 of

2016, 260 of 2016, 425 of 2016 and 75 of 2017 are registered.

6) Although, this Court had passed an order that a discrete inquiry to be conducted, it appears that senior P.I. of Dharavi Police Station has recorded the statement of Atmadevi. In fact, it was not expected that she should be informed about the inquiry i.e. being undertaken against her.

7) The learned counsel for the applicant at this stage submits that the moment she had learnt about the said inquiry, Atmadevi had attacked mother of the victim. Investigating Officer has also obtained certificate from 'Learn Mahila Kamgar Sanghathana'. The said certificate was purportedly issued on 01/09/2015 recommending Mrs. Atmadevi Jaiswar for any employment especially ones that require mass-based mobilisation. Learn Mahila Kamgar Sanghatana is registered under Trade Unions Act, 1926. There are several complaints on record against Atmadevi. The manner in which the investigating agency is conducting investigation and protecting Atmadevi is deprecated. In fact, mother of the victim has lodged report at the police station on 02/01/2017 against Atmadevi which is registered as non-cognizable case.

8) The learned APP submits that for the conduct of Atmadevi, it cannot be presumed, at least *prima facie* that the report lodged at the police station by the victim stands falsified. It is also submitted that in all probabilities the victim had exonerated her father in her statement under section 164 of the Code of Criminal Procedure, 1973 under pressure and coercion.

9) This Court finds no reason to disbelieve the statement of the victim which was recorded earlier. It is therefore not possible to enlarge the applicant on bail. It is not only unfortunate but the act is perverse if the allegations are true since the accused happens to be biological father of the victim. It is in these circumstances that the applicant does not deserve to be enlarged on bail.

10) Application, being sans merits, stands rejected.

11) In the peculiar facts and circumstances of the case, the learned Special Court is requested to make every endeavour to conclude the recording of

evidence in POCSO Case No. 432 of 2016 as far as possible within 6 months from the date of framing of charge.

(SMT. SADHANA S. JADHAV, J.)