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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 743 OF 2018

Sandeep Chandraprakash Goenka & Anr.... Applicants

Vs.

The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION No. 749 OF 2018

Mrs. Megha Avinash Dodeja & Ors. ... Applicants

Vs.

The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION No. 763 OF 2018

Shefali Tiwari ... Applicant

Vs.

The State of Maharashtra ... Respondent

AND

Arti Merzi Sodawaterwala ... Intervenor
(in all ABAs)

Mr. A. P. Mundargi, Sr. Counsel a/w Ms. Sonal Parab i/b Rajeev
Sawant & Associates, for the Applicants in ABA. 743/2018.

Mr. M. S. Mohite, Ms. Sonal Parab i/b Rajiv Sawant & Associates for
Applicants in ABA. 749/2018.

Mr. Subodh Desai, Chandansingh Shekhawat, Ms. Suvadha Achliya
i/b Juris Corp. for Applicant in ABA. 763/2018.

Mr. Madhav Jayajirai Jamdar, for Intervenor.

Mr. Vinod Chate, APP for the Respondent – State in ABA. 743/2018.

Mr. R. M. Pethe, APP in ABA. 749/2018.

CORAM : P. N. DESHMUKH, J.

DATE : APRIL 19, 2018

PC :-

1. As all three applications filed for anticipatory bail are arising out of C. R. No. 187/2017 registered with Yerwada Police Station, Pune, for the offences punishable under Section 406, 419, 317, 323 read with 120B of Indian Penal Code, under Section 17(1)(2) of the Right to Education Act; under Section 75 & 82 of the Juvenile Justice (Care & Protection of Children) Act, 2015, they are heard together for the purpose of convenience and decided by this common order.

2. Applicant No. 1 in Anticipatory Bail Application No.743/2018 is Director of Citizen Educational Foundation which runs the C. P. Goenka International School in Pune, since 2012 and also a trustee and administrator of said institution as well as of institutions situated at Juhu, Oshiwara, Thane and Pune. He is also one of the trustees of Swami Vivekanand International School situated at Kandivali and Borivali in Mumbai, imparting education to around

16,000 students from Nursery to Grade X and also Junior College under different boards, viz. IGCSE, ICSE, SSC and HSC. Applicant No. 2 is wife of Applicant No. 1 and academic head of C. P. Goenka Group of Schools.

3. Applicant No. 1 in Anticipatory Bail Application No.749/2018 is teacher and coordinator of above institution inasmuch as Centre Head for Admission and H. R. of the Pune School, and as such working in that capacity from March, 2012 to August 2017. Applicant No. 2 is a teacher appointed for Grade I A for the academic year 2017-18. Applicant No. 3 is a Physical Education Instructor working in the institution and Applicant No. 4 was the Academic Coordinator of the School.

4. Applicant in Anticipatory Bail Application No.763/2018 is a highly qualified person having Bachelor degree of Engineering (Electronics), MA, MED and Diploma in School Management and is erstwhile Principal of Euro School, located at Atur Nagar, Undri, Pune since 28th August, 2017.

5. All the Applicants are apprehending their arrest in the above crime, which is registered at the instance of Mrs. Aarti Merzi

Sodawaterwala (hereinafter referred to as the “complainant”). Heard learned senior counsel Mr. Ashok Mundargi for Applicants in Anticipatory Bail Application No.743/2018. Learned counsel appearing for Applicants in ABA Nos. 749/2018 and 763/2018 adopted submissions advanced on behalf of Applicants in Anticipatory Bail Application No.743/2018. Heard Mr. Vinod Chate and Mr. R. M. Pethe, learned Additional Public Prosecutors appearing for Respondent State, and learned counsel Mr. Madhav Jamdar appearing for complainant / intervenor.

6. Following facts are necessary to understand controversy in the present crime:

. Complainant was informed by one of the business acquaintance of her husband about C. P. Goenka International School where complainant intended to admit her minor son and had accordingly approached said school and was received by Applicant – Mrs. Megha, Coordinator, Centre Head of admission. According to Applicants, they had informed the School Authorities about the deficiency suffered by their son and as such informed that Master Zayne was a special child while they were made to understand that

Applicant School supports “inclusion” of practice of providing “special support and related services to a child with “special needs” in regular classroom and according to the terms mentioned on the admission form of a school “inclusion” means all students entitled to equal opportunity of equal rights. According to complainant, all such information was very much printed on the admission form itself, which is relied by complainant and as filed on record by the Applicants in support of their application for intervention.

.. It is also case of complainant that at the time of admitting their son, Applicant Mrs. Megha also informed complainant that they should seek admission of their daughter alongwith their son so that they can save some fee structure. Apart from that, complainant and her husband also find that if their son and daughter study together in same school, they can have effective bonding. Accordingly, complainant's son was admitted in Grade-I. It is the specific case of complainant that at the time of admission, they had informed Applicants institution authorities that their son was initially studying in Phoenix World School, for which admission was withdrawn as he suffered from physical abuse and consequently could not complete his Grade-I in

that school. Applicant Mrs. Megha Dodeja, then on obtaining advise from Applicant Shefali Tiwari, Principal admitted child as it will be beneficial for him.

7. It is case of complainant that Applicant Mrs. Megha suggested their son to be admitted for summer camp so as to get familiar with teachers and school environment, for which complainant paid Rs.5,000/- and the Institute has got one undertaking having right in their favour to decide about child's continuation in the School, which admittedly was signed by complainant's husband.

8. In the background of above facts, it is the case of complainant that during the summer camp, she received call from one of the teachers of the institution informing complainant that her son is using filthy language, upon which complainant informed her not to worry and that children pick up words after hearing other children, etc. Thereafter again one of the administration in-charge by name Mr. Kumar informed complainant that her son is using filthy language, upon which complainant thought that some staff of the school might be causing trouble to their son and therefore, complainant sent email on 5th May, 2017 to Mrs. Shefali Tiwari, the then Principal, expressing

their intention to cancel admission of their children and claimed refund of amount of fees. On sending such email, complainant's case is that, on 8th May, 2017 Mrs. Shefali Tiwari sent email to complainant informing them to share Do's and Dont's of their son and also informed that issue will be discussed with the respective teachers so as to settle the child, and as such, it is the case of complainant that an assurance was given by the Principal of the School to take proper care of the child whenever he is in their custody and has also stated that school authorities are also looking for the special educator for Master Zayne. Complainant claims to have requested the school authorities for arrangement of special educator was must for their child and for that purpose also sent email.

9. According to complainant, after the summer camp, since their child was required medical attention, he was referred to Dr. L. H. Hiranandani Hospital and as per the medical report medical status of their child was stated to be getting bad after summer camp and during completion of 40 sessions of HBOT, overall condition of Master Zayne has remarkably improved.

10. According to complainant, since first day of the school,

their child did not settle down and whenever he used to go home, informed his mother that he does not want to go in a day care. In the background of above facts, there were several meetings held with the Principal, concerned staff, coordinator when the child's parents made a grievance against the authorities for not providing special educator, which was assured at the time of seeking admission. It is also specific case of complainant that in meetings with the teachers and coordinator, complainant's husband had expressed that in view of their attitude of not providing special educator as aforesaid, he will make complaint against staff with the trustees as they categorically admitted for providing special educator at the time of giving admission of the child. In the background of above facts, report came to be lodged on 19th March, 2018 by mother of Master Zayne, on the basis of which offence, as aforesaid came to be registered. Prior to lodging of report after complainant continued the child in the school, complaint was initially filed with the Commissioner of Police on 29th September, 2017, which complaint according to the statement made by learned APP on instructions, is duly inquired into.

11. Referring to the offences which are applied in the present

crime, learned senior counsel has submitted that from the entire report not a single ingredient of Section 419, 406, 311, 317, 323, 120B of I.P.C, Section 17(1)(2) of the Right to Education Act and Sections 23, 75, 82 of Juvenile Justice (Care and Protection of Children) Act, 2015 can be said attracted, and for that purpose, he has also referred to relevant provisions of the statute and contended that even considering the nature of offence involved in the present crime which is mainly based on documentation, no custodial interrogation of any of the Applicants is necessary. It is also contended that as the offence is based on documentary evidence, there is no question of any recovery or discovery at the instance of Applicants and even otherwise Applicants are ready and willing to make themselves available as and when required by I. O., who admittedly, have no criminal antecedents, and in fact, having roots in the society and all are highly educated personalities in the field of education, which are admitted facts, and contended that applications be allowed.

12. In the background of submissions advanced as aforesaid, perusal of Section 311 and 317 of I.P.C. would reveal that prima-facie no ingredients, as is stated in these two provisions, are found attracted.

For the purpose of reference, sections 310 and 311 are reproduced below:

“310. Thug —

Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child stealing by means of or accompanied with murder, is a thug.”

“311. Punishment —

Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable. Of the Causing of Miscarriage, of Injuries to Unborn Children, of the Exposure of Infants, and of the Concealment of Births.”

Similarly, Section 317 of I.P.C. contemplates as under:

“317. Exposure and abandonment of child under twelve years, by parent or person having care of it —

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation — This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years, or fine, or both—
Cognizable—Bailable—Triable by Magistrate of the first
class—Non-compoundable.”

13. Considering the facts as revealed from the complaint and above stated provisions, prima-facie it does appear that either of these sections are attracted. In fact, learned APP has produced on record remand application in respect of other co-accused, who was also teacher and subsequently released on bail, from which it is also seen that Section 311 has been deleted from the crime.

14. With regard to application of Section 75 and 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which contemplates for corporal punishments, the same are not attracted in view of definition in Section 2 (21) and 2 (24), which read as under:

“2(21) “child care institution” means Children Home, open shelter, observation home, special home, place of safety, specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services.”

“2(24) “corporal punishment” means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child.”

15. Coming to the case of complainant of the school authorities not providing or making any attempt to provide special educator to the child, learned senior counsel for Applicants relied upon the format of application of their school. On perusal of same, there appears one column that the parents are supposed to state about any special requirement to be provided for their child. In fact, it is specifically stated that this column should be filled in detail, which information help in assessing the child. Said column in the form is kept blank, which is in respect of admission of child Zayne for the year 2017-2018. There is a specific reference to “Inclusion Policy”, which reads as under:

“Inclusion Policy

C. P. Goenka International School supports INCLUSION as a practice of providing “special support and related services” to a child with “Special needs” in the regular classroom. We spend a great deal of time and energy in investigating the variables that make inclusive educational endeavors work in the best possible way.

“Inclusion” means that all students are entitled to equal opportunities provided by the school. The Counselor / Special Educator in cooperation with the class teacher is involved in early identification, informal assessment of learning / behavioral difficulties. The Counselor may recommend formal assessment, which needs to be submitted within a month of the parent being informed.

Based on observations and reports, the Counselor / Special Educator recommends whether the child would benefit from being included in the classroom with, or without assistance. The recommendation is made on the basis of whether the inclusion would require the specialized and personal interaction of a teacher. In such a case it alters the balance of the child:teacher ratio for the remaining children in the class.

If the need for a special teacher is felt then the parents need to provide the special teacher within a month. The cost of the special teacher will be borne by the parents besides the school fees. In absence of the special teacher a substitute needs to be provided by the parent or the teacher. The child's attendance during the absences of the special teacher depends on the severity of the case and the threat experienced by the other children in the classroom. The centre supervisor and in-house Counselor will communicate the decision to the parents.

As the parent / guardian of your child we request that you cooperate with us in every possible way if the informal assessment of our Counselor / Special Educator recommends any further action by way of a formal assessment or additional attention.”

16. In view of above facts, prima-facie it is found that at the time of admitting the students, school is supporting practice of providing special support as well as related services required to a child with special needs and in clear terms stated that parents' cooperation with the institute is necessary in every possible way and if found

necessary on the basis of assessment by the Counselor, Special Educator for additional attention can be provided by providing special teacher which is to be provided by the parents within one month of such communication, if any made. It is also contended that cost of special teacher will be borne by the parents, besides the school fees. In view of the terms on the application form as aforesaid, it is thus found that it was also necessary for parents of Master Zayne for taking special steps to provide special teacher for which nothing was done to take care by them. In that view of the matter, allegation in the complaint with regard to the physical disability of the child and the liability, as alleged upon the Applicants alone is of no consequence. It is also material to note that though a detailed complaint came to be lodged on 19.3.2018 making various allegations against the school authorities including the Applicants, thereby making an attempt of negligence on their part not to take proper care of the child while he is in the school, no such detail acts are narrated before the police prior to lodging of complaint. On the contrary, from the contents of report it is found that one of the police officer Ganesh Gawade, Assistant Commissioner of Police, Khadaki Division, Pune considering nature

of investigation carried out in the crime and in fact according to his advise, offence as aforesaid, came to be registered against the Applicants. Learned senior counsel for Applicants during the course of arguments has also pointed out as to in what capacity complainant came into custody of certain investigating papers relied upon in support of the intervention application, which are with reference to inquiry initiated on the basis of complaint lodged by the Commissioner of Police, being prior to lodging of report. Learned APP makes a statement that said inquiry is not yet concluded and probably might have been now included in the investigation of present crime. However, the fact remains that no charge-sheet is filed and in spite of same, copies of investigating papers are supplied to complainant which is apparent from documents filed in support of application. No satisfactory reason is given on this aspect of the learned APP.

17. Trial Court while considering allegations of complainant on the basis of documents filed in respect of mental disorder of the child, who admittedly is suffering from acute Traumatic Ischemic Brain Injury sustained by him due to fall by him about four years prior

to admission to the school, held that for this reason, child needs special care which was expected to be provided by the Applicants, who failed to provide in spite of the father of victim boy sending emails to the school teachers and trustees and weighing this evidence, held that custodial interrogation of the Applicants is required and accordingly rejected their anticipatory bail application. However, for the facts and reasons as stated above, and considering the status of all Applicants having roots in the society and having least chances of their fleeing from justice, applications are liable to be allowed by imposing suitable conditions upon Applicants. Learned APP submits that Applicants be directed to attend the Investigating Officer on Saturday and Sunday on 21st, 22nd and 28th, 29th April, 2018 and thereafter as and when required. In the circumstances, applications are allowed, as per order below:

- (i) In the event of arrest of Applicants, viz. Mr. Sandeep Goenka and Mrs. Archana Goenka (in Anticipatory Bail Application No.743/2018), Applicants- Mrs. Megha Dodeja, Mrs. Pooja Bhalla, Mr. Sachin Chavan, Mrs. Reema Khurana (in Anticipatory Bail

Application No.749/2018) and Applicant Arti Shefali (in Anticipatory Bail Application No.763/2018) in C. R. No. 187/2018 registered with Yerwada Police Station, they shall be released on bail, on their executing PR bond in the sum of Rs. 25,000/- each with one surety each in the like amount;

- (ii) Applicants shall attend Investigating Officer on 21st, 22nd and 28th, 29th of April, 2018 between 4.00 p.m. to 7.00 p.m. and thereafter as and when required till filing of the charge-sheet
- (iii) Applications are allowed in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemath