

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1372 OF 2018**

Mr. Firdaus Farrokh Havewala. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Niranjan Mundargi I/b. Mr. Rishikesh A. Mohite, advocate for applicant.

Mr. S.S. Pednekar, APP for State.

Ms. J.G. Panhale, PSI, Lashkar Police Station, Pune.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 13, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 438 of the Code of Criminal Procedure, 1908. The applicant herein is apprehending his arrest in Crime No. 133 of 2018 registered at Lashkar Police Station, Pune for offence punishable under section 354A of the Indian Penal Code and Section 7,8, 9, 10, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012.

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3 The applicant herein happens to be the husband of the complainant. They are the parents of two children i.e. daughter. They have lost their son in the year 2017. The applicant has obtained decree of divorce by mutual consent on 26th October, 2016. Prior to passing of the decree of divorce, the couple was staying separately.

4 In the year 2014 or so, the applicant had filed a petition seeking access to his children i.e. daughter and deceased son. That the applicant and the complainant had filed joint pursis before the family court at Pune on 26/12/2014 that the children would be visiting the applicant from 27/12/2014 to 1/1/2015 from 11.30 a.m. to 5 p.m. during day time. On 15/6/2018 wife of the applicant lodged a report at the police station alleging therein that on 25/12/2014 she had learnt from Dr. Natasha that her daughter had been inappropriately touched by the present applicant when they were residing together and at that time, the daughter was about 8 to 10 years old. Hence, she had enquired with her daughter and got it confirmed. It is pertinent to note that despite the said disclosure on 25/12/2014, the complainant had filed joint pursis with the applicant on 26/12/2014. While opposing the application seeking access to the children, the complainant had submitted that the petitioner has not placed any false allegation against the respondent i.e. present applicant and it is false to say that she has stated any allegations of sexual abuse

of her daughter by the respondent. At present, there are no orders passed in respect of access.

5 In view of the recitals of the FIR and the other applications filed on record, the applicant deserves to be granted pre-arrest bail.

6 The observations aforesaid are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered for discharge application, quashing of FIR or at the time of trial.

7 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No. 133 of 2018 registered at Lashkar Police Station, Pune, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called by the Investigating agency and cooperate with the investigating agency.
- (iv) The applicant shall not tamper with the evidence.

8 The application is disposed of accordingly.

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[SMT. SADHANA S. JADHAV, J.]