

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.1470 OF 2018
WITH
CRIMINAL APPLICATION NO.989 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO.1470 OF 2018**

Nandkumar Balaso Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Anand Patil I/b. M/s. Anand Patil and Associates for the Applicant.

Mrs. J.S. Lohokare, APP for the Respondent -State.

Mr. S.B. Nalawade, Police Sub-Inspector, Jaysinghpur Police Station,
present.

Mr. Pramod G. Kathane for the Intervenor.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 6th SEPTEMBER, 2018.

P.C.:-

This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant, apprehending his arrest in Crime No.122 of 2018 registered with Jaysingpur Police Station, District-Kolhapur, for offences punishable under Sections 363 and 366-A of the Indian Penal Code.

2. Mr. Anand Patil, the learned counsel for the Applicant submits that the Applicant is a police patil and that he is not involved

in commission of the crime. He has submitted that the victim girl had lodged a complaint against one Nemu Nandrekar and that in view of her complaint crime was registered against said Nandrekar and he was arrested. He submits that said Nemu Nandrekar has instigated the first informant to lodge a false complaint against the Applicant. The learned counsel for the Applicant further submits that the first informant has falsely stated that the victim is a 15 years of age when the birth certificate shows that she is about 17 years of age. He contends that the Applicant being a police patil, will be easily available for investigation and interrogation and that this is not a case which warrants custodial interrogation.

3. Mrs. J.S. Lohokare, the learned APP submits that the statement of the victim was recorded under sections 161 as well as 164 of the Cr.P.C. and that her statement prima facie reveals that the Applicant was involved in committing the crime. She submits that the victim was admittedly a minor and hence provisions of Protection of Children from Sexual Offences Act, 2012 are applicable. She further submits that in the course of the investigation, the investigation agency has also added provisions of 3(1)(W)(i) (ii), 3(2)(av) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

(for short 'the SC ST Act'). She submits that considering the seriousness of the offence, the Applicant is not entitled for bail under Section 438 of the Cr.P.C.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. In the instant case, the crime was registered pursuant to the FIR lodged by the brother of the victim. In the FIR as well as the statement of the victim recorded under Section 161 and 164 of the Cr.P.C. the first informant and the victim have not made reference to their caste. They have also not claimed that the Applicant had committed the offence knowing that the victim was a member of a schedule caste. Under the circumstances, prima facie in my considered view, the provisions under the SC ST Act, including provision under Section 14 A and the bar under Section 18 of the SC ST Act, are not applicable. Consequently, the application is maintainable.

6. Now coming to the merits of the matter, the material on record indicates that the victim is a minor girl. The mother of the victim was working for the Applicant. The statement of the victim

prima facie indicates that the Applicant, who is a police patil had sexual intercourse with her. The victim was referred for medical examination. The medical certificate also prima facie supports the case of the prosecution.

7. The FIR prima facie reveals that the Applicant had told the first informant, the brother of the victim girl that he is a police patil and that he should not interfere in their relationship. The Applicant had offered to pay to the first informant an amount of Rs.3,00,000/- and give a portion of land to ensure that he does not raise any objection. The first informant has further stated that the Applicant was enticing his minor sister to keep relationship with him under the promise of marriage. The material on record further reveals that the Applicant had kept the victim girl and her grandmother in a rental flat at Kolhapur and later at Ichalkaranji.

8. The records thus prima facie indicates that the Applicant, who is 40 years of age has had sexual intercourse with a minor girl. He has been enticing her in keeping relationship with him with a promise of marriage. The Applicant, who is a police patil is also misusing his power and position to scuttle any resistance from the family of the victim girl. The material on record also prima facie

reveals that the Applicant has lured the first informant with money and property so as to not to raise objection to his relationship with the victim girl.

9 The nature of allegations levelled against the Applicant does not justify grant of pre-arrest bail. Considering the totality of the facts and circumstances the possibility of the Applicant misusing his power and position to pressurise the victim and the witnesses cannot be ruled out. In my considered view, grant of bail will thwart the course of justice.

10. Under the circumstances and in view of discussion supra, the application is dismissed.

11. Suffice it to say that the observations made whilst deciding this application are prima facie and are not to be construed as an expression of opinion on merits of the matter.

12. In view of dismissal of the anticipatory bail application, the Criminal Application No.989 of 2018 does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)