

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No. 2267 OF 2019

Dr. Vidya Balasaheb Karvekar

...Applicant

Versus

The State Of Maharashtra

...Respondent

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Mr. A.P. Mundargi, Senior Advocate i/b. Ritesh M. Thobde, Advocate for the Applicant.

Mr. Prashant Jadhav, APP, for the Respondent-State.

Jadhav B.S. PSI, MIDC Police Station, Solapur is present.

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CORAM : SARANG V. KOTWAL, J.

DATE : 17th OCTOBER, 2019

P.C.

1. The applicant is seeking anticipatory bail in connection with C.R. No.576/2019 registered with MIDC Police Station, District – Solapur. The offence was registered on 26.8.2019 originally under Section 376 and 504 of I.P.C. and under Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as ‘POCSO Act’).

2. The applicant has nothing to do with this offence, however, the investigating agency has applied Sections 312 and 315 of I.P.C. against the present applicant and, therefore, she

apprehends her arrest in connection with this offence.

3. The FIR is lodged on 25.2.2019 by the father of the victim. The FIR describes how his own nephew established physical relations with his minor daughter. As a result of which, the victim became pregnant. The FIR mentions that after the victim became pregnant, she was taken to the applicant's hospital. At that time, the first informant has specifically told the applicant that the victim was 18 years of age. He insisted that the applicant should perform the procedure for abortion. The applicant was specifically told that the victim had become pregnant because of her relations with her own cousin and to avoid further complications and tarnishing of her name they wanted to perform this procedure. On 1.8.2019, the applicant terminated victim's pregnancy. On 24.8.2019, the Police Officers of Vijapur Naka Police Station called the informant, made enquiries and then lodged this FIR. The main accused, who had kept relations with the victim, was about 19 years of age. On this basis, the FIR was lodged.

4. The applicant is apprehending her arrest because the investigating agency has applied Sections 312 and 315 of I.P.C.

5. I have heard Shri A.P. Mundargi, learned Senior Counsel for the applicant and Shri Prashant Jadhav, learned A.P.P. for the State.

6. Shri Mundargi submitted that absolutely no offence is made out against the applicant. She acted in good faith on the information given by the first informant and the victim herself. The FIR itself shows that the first informant had told the applicant that the victim was 18 years of age. The applicant had obtained opinion of another doctor and thus the requirements of Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'MTP Act') were complied with. After taking all the precautions and after complying with the provisions of law and taking into account the request made to her by the informant as well as the victim, she had terminated the pregnancy and, therefore, no offence is made out against her.

7. Learned A.P.P. opposed this application.

8. I have considered all these submissions. It is rather unfortunate that the applicant has to run from pillar to post for securing anticipatory bail. From the facts of the case, it is more

than clear that she is unnecessarily dragged in the whole episode.

9. The main offence is against one Lalu Ghodake and proper sections applied against him are Sections 376 and 504 of I.P.C. as well as Sections 4, 6 and 8 of POCSO Act.

10. The applicant was not even told that the victim was a minor. The record shows that the applicant had complied all the requirements of Section 3 of the MTP Act. She had obtained opinion of another doctor. The pregnancy was caused by the victim's cousin and Section 3(2)(b)(i) of the MTP Act provides that the pregnancy can be terminated by a registered Medical Practitioner if the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health. In this particular case, it is more than obvious that the continuation of the pregnancy would have caused serious problem to victim's mental health considering her future. Sub-section (4) of Section 3 of the MTP Act also provides that the pregnancy cannot be terminated without the consent in writing of the guardian of a minor girl or by the consent of the pregnant woman as such. In this case, the consent was given by the parents

as well as the victim herself. Therefore *prima facie* all the requirements of law are complied with. It is hard to understand as to how Section 315 of I.P.C. could be applied in this case. Section 312 of I.P.C. is bailable. In this view of the matter, there is absolutely no propriety in denying anticipatory bail to the present applicant. Therefore, I am inclined to protect the applicant by following order :

O R D E R

- (i) In the event of her arrest in connection with C.R. No.576/2019 registered with MIDC Police Station, District – Solapur, the applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)