

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

ANTICIPATORY BAIL APPLICATION NO.592 OF 2019

Prajakta Suhas Dhumal Applicant

versus

The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.874 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.592 OF 2019**

Suhas Dyaneshwar Dhumal ...Intervener

IN THE CASE OF

Prajakta Suhas Dhumal Applicant

versus

The State of Maharashtra Respondent

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- Mr. Santosh S. Musale, Advocate for Applicant.
- Mr. Anant Vadgaonkar, Advocate for Intervener.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. Hingole, A. B., PSI, Hinjewadi Police Station, present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 29th JULY, 2019**

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.795/2018 registered at Hinjewadi Police Station, Pune under section 328, 323, 506 r/w. 34 of IPC, under section 12 of the Protection of Children from Sexual Offences Act (POCSO) and under section 23 and 75 of the Juvenile Justice Act.

2. The FIR is lodged by father of the victim boy on 27/11/2018. It is mentioned in his FIR that he was earlier married to his first wife in the year 2004 and they had a son from that marriage. That son is the victim in the present FIR. It is mentioned in the FIR that first informant obtained divorce from his first wife in the year 2014 and thereafter, he got married with the present applicant. Thus, the present applicant was step mother of the victim child. It is his further case that the applicant did not behave properly with his parents and therefore, they went to reside at their native place. The applicant used to harass the son. He observed that the son was mentally depressed. The applicant used to make false complaints against the victim before strangers.

The son was getting mentally disturbed because of this. They started residing at Blue Rich Society at Hinjewadi since March 2017. It is his case that his son had told him that he was having burning sensation on his private parts. The informant did not pay any attention. In July 2017, the applicant assaulted the son in front of first informant. In that incident, the informant had suffered bleeding injury at the hands of the applicant. The informant was told by his friends that the applicant had harassed the victim in their presence. In August 2017, the informant took his son to a medical practitioner. At that time, his son told him that the applicant had given him some intoxicating substance and had touched him inappropriately. The victim was shown obscene videos. It is further mentioned in the FIR that the applicant was physically and mentally harassing him. She used to assault him. Whenever the victim was taken to applicant's maternal house, even at that time her family members also used to harass him. They used to keep him locked in the toilet and his life was made miserable. After coming to know all these, the informant kept the victim boy with his brother residing at Airoli since August 2017.

On these allegations, the FIR was lodged.

3. Heard Mr. Santosh S. Musale, Ld. Counsel for the Applicant, Mr. Anant Vadgaonkar, Ld. Counsel for the Intervener and Ms. Kaushik, Ld. APP for the State.

4. Mr. Musale, Ld. Counsel for the applicant submitted that the present FIR is lodged as a counter blast to the various proceedings filed by the applicant against the first informant. He invited my attention to an NC dated 18/9/2017 which the applicant had lodged against the first informant at Hinjewadi Police Station, Pune on the allegations that the applicant had threatened her as well as the victim son and he demanded divorce from her. One more complaint dated 21/9/2017 was given by the father of the applicant against the first informant to the same police station alleging that the first informant was demanding money from him. Then the applicant had filed her FIR on 13/10/2017 under section 498-A of IPC at the same police station making allegations against the informant that she was harassed on

demand of money to purchase a flat. There was a reference to the victim's son. She had mentioned in that FIR that the victim son wanted to meet his biological mother but the informant was preventing him from meeting her.

5. The applicant has also filed proceedings under the Protection of Women from Domestic Violence Act, 2005 on 31/10/2017 mentioning such harassment at the hands of the first informant.

6. Shri. Musale pointed out that the informant had filed his reply before the JMFC under D. V. Act on 31/1/2018 and even in that reply there is no reference to the fact that the applicant had given some stupefying substance to the victim to attract section 328 of IPC and there is no reference to any act falling under the POCSO Act. There are only vague allegations that the applicant had exploited the victim mentally and had harassed him physically.

7. Ld. Counsel for the applicant relied on one letter dated 24/10/2018 which mentions that the applicant had approached Child Welfare Committee and had requested them to make arrangement for medical examination of the victim son. In the background of all these proceedings, the informant has lodged the present FIR making serious allegations against the present applicant. Shri. Musale therefore submitted that the FIR is lodged as a counter blast and it is lodged at belatedly in the year 2018 after all these proceedings were initiated by the present applicant.

8. As against this, Shri. Vadgaonkar, Ld. Counsel for the Intervener submitted that the allegations in the FIR are true and merely because the applicant had lodged earlier proceedings would not mean that the allegations in the FIR are false. He submitted that as per the directions of this court the statement of the victim boy is already recorded under section 24 of the POCSO Act and the Court should give proper weightage to that statement. He further submitted that the informant had come to know about the incident in August 2017. However, he did not want the child

to suffer further trauma and therefore had not lodged the FIR immediately.

9. Ld. APP produced investigation papers before me including the statement of the victim boy recorded under POCSO Act.

10. I have considered these submissions. The applicant has been filing different complaints against the present first informant much prior to lodging of the FIR in question. Her consistent allegations against the informant are that he was harassing her.

11. Shri. Musale rightly submitted that even the reply filed by the first informant before the JMFC Ahmednagar, under D. V. proceedings does not make any reference to the allegations of any instance which would attract section 328 of IPC or even section 12 of the POCSO Act. The alleged incident had taken place according to first informant in August 2017 and the FIR is lodged by him

only on 27/11/2018. In the meantime, the applicant had taken recourse to filing various complaints and proceedings. Therefore, there is considerable force in the submission of Ld. Counsel for the applicant that the present FIR is filed as a counter blast to all these proceedings. Though the allegations are serious, at the same time the backdrop of those allegations cannot be ignored.

12. I have also perused the statement of the victim recorded under section 24 of the POCSO Act. The statement shows that some leading questions were put to him and the child has even offered explanation for the delay in informing about the incident. This appears unnatural for a boy of 10 years of age. Some leading questions are put to him. Prima facie, the statement of the victim does not inspire confidence. However, this has to be tested during trial.

13. Shri. Vadgaonkar, has rightly submitted that there is presumption under the POCSO Act. However, looking at the background as mentioned earlier; at this stage, I am only

considering the question of necessity of custodial interrogation of the applicant. Therefore, all these questions can be decided during trial.

14. Taking into account above discussion, there is a strong possibility that the applicant is implicated because of the previous litigation. The custodial interrogation cannot reveal anything which can be obtained as a evidence in this case. The incident in question allegedly had taken place in August 2017. It is more than two years since then. Therefore, in this view of the matter, custodial interrogation of the applicant will not serve any purpose. Though the applicant will have to co-operate with the investigation. It is made clear that all these observations are made only for the decision of this application and the Trial Court shall not be influenced by the observations of this Court. Hence, the following order.

ORDER

- (i) In the event of her arrest in connection with C.R. No.795/2018 registered at Hinjewadi Police

Station, Pune, the applicant is directed to be released on bail on her executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (ii) The ABA No.592/2019 is disposed of.
- (iii) The Criminal Application No.874/2019 for intervention is also disposed of.

(SARANG V. KOTWAL, J.)