

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

ANTICIPATORY BAIL APPLICATION NO.1643 OF 2019

Sunil Vasantao Patil

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Tejas Hilage, Advocate for Applicant.
- Mr.Y.M. Nakhwa, APP for the State/Respondent.
- API Mr.V.A. Shelar, Shahupuri Police Station, Satara, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JULY, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.205/19 registered with Shahupuri Police Station, Satara.

2. The offence is registered on 08/06/2019. The FIR is lodged by the wife of the present Applicant. She has stated in her FIR that the Applicant was her husband and she was residing separately from him at the time of lodging of the FIR.

She had already lodged a complaint against him at Shahupuri Police Station, Satara on 04/05/2019 for causing harassment to her. She has mentioned that on 30/08/2018 she was residing at Samarthnagari Building, Mangalwar Peth, Satara with the Applicant and their daughter, who was about 5 years of age. The child had infection therefore she was taken to doctor on 31/08/2018. Doctor gave her a medicinal cream. On 01/09/2018 the child told the first informant that the present Applicant had committed an objectionable act. The informant was under the impression that perhaps the Applicant had applied the cream given by the doctor.

3. She has further mentioned in her FIR that on 08/06/2019, the child told her about the past incident and mentioned that the Applicant had committed that act and had told the child not to tell about that to the first informant. The informant thereafter realized that it was a serious offence committed by the Applicant and therefore she lodged this FIR.

4. Heard learned Counsel Mr.Mr.Tejas Hilage for the Applicant and learned APP Mr.Y.M. Nakhwa for the State.
5. Learned Counsel Mr.Tejas Hilge pointed out that the informant had lodged a complaint u/s 498-A of IPC on 04/05/2019 at Shahupuri Police Station. Thereafter she had initiated proceedings under the Protection of Women from Domestic Violence Act on 16/05/2019 vide Criminal Miscellaneous Application No.323/19. He invited my attention to the averments made in both these applications. In none of these applications, there is a reference to this incident. Though, the first informant has claimed in her FIR that she realized only in June 2019 that the Applicant had committed that offence in August 2018. Mr.Hilge submitted that it is one more attempt on the part of the informant to harass the Applicant by making very serious allegations. He submitted that considering the strained relationship, the allegations made by the informant will have to be tested carefully. From the past history of dispute between the couple, it is obvious that the Applicant is implicated falsely.

6. Learned APP Mr.Y.M. Nakhwa has produced the investigation papers before me. The medical examination of the child shows that her hymen was ruptured. He therefore submitted that the medical examination supports the case of the first informant. He submitted that the statement of the victim is recorded under the provisions of POSCO, wherein she has told the same story.

7. I have perused the statement of the victim and she has narrated the same story as narrated by the first informant. Significantly the statement is recorded in presence of the first informant. In the light of the dispute between the husband and wife this statement of the child will have to be treated carefully. The statement was recorded by PSI Dalimbkar. No independent woman from Mahila Dakshata Committee was present. Mr.Hilge rightly submitted that the child was residing with the mother and therefore she was under the influence of the mother when this statement was recorded. The mother was present that time.

In any case, it is an admitted position that the doctor had given a medicine for applying at the place of infection and therefore it is quite possible that the ointment was applied there. There are no other allegations of indecent behaviour of the Applicant towards the child.

8. The allegations in the FIR are made much belatedly and the informant has tried to explain this delay by stating that the child told her about the incident only on 08/06/2019. There are possibilities that the present FIR is lodged because of the strained relationship between the couple and if the Applicant is arrested on the basis of such allegations, his entire future will be ruined. Significantly the allegations are only in respect of one instance which is related to the circumstance of the child suffering from an infection. The doctor had given an ointment for applying it at the infected spot. Therefore, at this stage, it is very difficult to observe that the Applicant had committed the offence as alleged by the informant. The investigation can certainly go on, but the custodial interrogation of the Applicant

will not help in any manner in the progress of investigation. Therefore considering the fact that there is a strong possibility that the allegations could be false, I am inclined to grant protection to the present Applicant. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.205/19 registered with Shahupuri Police Station, Satara, the Applicant is directed to be released on bail on his 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.)