IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2065 OF 2018

Imtiaz Fazalulhaque Khan Applicant
versus
The State of Maharashtra Respondent

Ms.Veena Dubey for applicant.
Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd January 2019

PC :

1. This is an application for anticipatory bail in connection with CR No. 408 of 2018 registered with Oshiwara Police Station for the offences punishable under Sections 354(A), 509 and 506 of Indian Penal Code and Section 12 of POCSO Act.

2. The complainant is the niece of the applicant who is aged about16 years. FIR was lodged on 15th September, 2018. It is alleged there was a dispute over the property between the applicant and the family of the complainant. Applicant is the uncle of the victim. On 15th September, 2018 the complainant was proceeding to Okaz Shopping Centre at Andheri to attend birthday celebrations of her friend Humaira. At that time complainant met her friend Humaira and while talking to her, the applicant accused who was standing near Okaz Shopping Center called her. Humaira stood aside. Accused told complainant that she should go to Mahim and should not come to that area. It is further alleged that applicant thereafter abused the complainant in filthy language and used

obscence words as reflected in the First Information Report and threatened her for the cool response given by the complainant to him and stating that she should not show attitude, otherwise acid will be thrown on her face. Subsequently, FIR was lodged.

3. Case of the applicant is that the complainant is the daughter of his real brother. His real brother and the applicant's son were murdered. The accused involved in said murder were closely associated with Hmaira. Sole intention of the applicant was to inform the complainant that she should keep herself away from Humaria. It is further submitted that taking the allegations as it is, the offence under Section 354A of Indian Penal Code is not made out. It is also submitted that there is no physical assault and only on the basis of abusive words Section 12 of POCSO Act and provisions of Penal Code has been invoked against the applicant. Application preferred by the applicant before the Sessions Court has been rejected.

4. Learned APP submits that the accused has issued threat of throwing acid on the face of the complainant and also used abusive language against her.

5. The applicant was granted interim protection vide order dated 6th October 2018. While granting interim protection it was directed that the applicant shall attend Oshiwara Police Station as and when called by the investigating officer. It is submitted by learned advocate for the applicant that the applicant was not called for interrogation by the investigating officer. While granting interim protection it was observed that by order dated 6th October 2018 there is a dispute between the applicant and family of complainant.

Applicability of Section 12 of POCSO Act as well as Section 354 of IPC is debatable. Considering the nature of offence, the applicant was directed to co-operate with the investigation.

6. In the circumstances, interim protection granted earlier can be confirmed. Hence, I pass following order :

ORDER

(i) Criminal Anticipatory Bail Application No.2065 of 2018 is allowed and disposed off;

(ii) In the event of arrest of applicant in connection with CR No.408 of 2018 registered with Oshiwara Police Station, the applicant be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the investigating officer of Oshiwara Police Station as and when called by the investigating officer till filing of charge sheet.

(PRAKASH D. NAIK, J.)

MST