

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.746 OF 2020

Mr.Rajendra Alias Vinod Vilasrao
Patil (Bhutale) = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.SV Gawande, Advocate for Applicant;
Mr.SW Mundhe, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 16/10/2020

PRONOUNCED ON : 06/11/2020

PER COURT:-

1. Present applicant is apprehending his arrest in connection with CR No.135/2020 dated 3.8.2020 for the offences punishable under Sections 354, 354-D of IPC and Sections 8 and 12 of POCSO Act, registered with Markhel Police Station, Tq.Degloor, District Nanded.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. Learned Advocate appearing for applicant

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would submit that the prosecution case is that, informant is aged 16 years and 10 months old, studying in XII Std. at Degloor. She has lodged a report in respect of the incident dated 31.7.2020 on 3.8.2020. There is inordinate delay in lodging the report, which has not been explained by the informant. The applicant is innocent and has been falsely implicated. The informant and her family are politically strong. In fact, the applicant and his family are cultivating the land, in which the informant's father and uncle are interested. The said land belongs to relative of the informant. Several times, informant's father and uncle had threatened the applicant-accused and his family and tried to prevent them from cultivating the land. Report filed against the applicant is also one of the said attempts. The informant's uncle and other relatives had gone to the house of the accused at about 8.00 pm on 2.8.2020; gave him and his family threat of dire consequences, if he continues to cultivate the land. Father of the accused has lodged a report against informant's uncle and other relatives, which has been registered as CR No. 137/2020. All these aspects would show that the

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applicant has been falsely implicated. Custodial interrogation of the applicant is not required and, therefore, he deserves to be released on bail. He had approached to the Additional Sessions Judge, however, his application has been rejected.

4. Per contra, learned APP strongly opposed the application on the ground that not only the present FIR, but the accused is also an accused in CR No.136/2020 registered by cousin brother of the informant on 3.8.2020 for the offenses punishable under Sections 324, 504, 506 read with 34 of IPC. Custody of the present applicant is required in that case also. Possibility of commission of another crime by the present applicant cannot be ruled out. So also, there is threat to the life of the witnesses.

5. At the outset, the contents of the present FIR are required to be considered. The informant in CR No.135/2020 is a girl, aged 16 years and ten months, who is taking education in Degloor College, Degloor in 12th Std. She has stated that when she was proceeding for answering

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nature's call at about 6.30 am on 31.7.2020, the applicant followed her and by giving hug from behind, though she shouted, had kissed her left cheek. It is alleged that he gave threat to her that if she discloses the incident to anybody, then he would kill her as well as her parents. She has further stated that due to fear of being defamed though she had told the said fact to her parents, she had not lodged a report immediately, but it was lodged on 3.8.2020 at about 7.18 am. The manner in which the alleged offence is stated to have been taken place and the sections involved, definitely, physical custody of the applicant is not required. However, the prosecution has come with a case that the applicant is also involved in another crime, i.e. Cr No.136/2020. Perusal of contents of that FIR would show that the alleged incident is dated 2.8.2020 at about 8.30 pm and report about the same has been lodged at about 8.28 am on 3.8.2020. The sections those have been stated are 324, 504, 506 read 34 of IPC. All of them are bailable offences and, therefore, custodial interrogation of the applicant in that case is absolutely not required. The applicant says that his father has lodged the

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report against uncle of the informant and others, which has been registered as CR No.137.2020 at 9.18 am on 3.8.2020. Perusal of that FIR would show that the incident had taken place at about 8.00 pm on 2.8.2020 and the sections involved are 452, 323, 504, 506, 427 read with 34 of IPC. Thus, all the three FIRs have been lodged on the same day only difference is of timings.

6. In P.Chidambaram Vs. Directorate of Enforcement – (2019) 9 SCC 24, the Hon'ble Apex Court has observed, -"Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under [Section 438 Cr.P.C.](#) is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of

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anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

7. Further, after taking a note of the decision in State of M.P. Vs. Ram Kishna Balothia - (1994) 3 SCC 221, it has been concluded, - "We are conscious of the fact that the legislative intent behind the introduction of [Section 438 Cr.P.C.](#) is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest.

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It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under [Article 21](#) of the Constitution of India."

8. Further, it will not be out of place to mention the factors and parameters laid down by the Hon'ble Apex Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra – (2011) 1 SCC 694. They are as follows, -

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

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vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9. Further, note of decision in the case of Jai Prakash Singh Vs. State of Bihar – (2012) 4 SCC 379 was taken, wherein it was held thus, -

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and

further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty."

10. Therefore, taking into consideration the law laid down on the point of anticipatory bail, here, it can be seen that there appears to be delay in lodging the present FIR, i.e. Cr No.135/2020. Though the explanation has been given whether that explanation is sufficient or not, would be considered at the time of trial and further it also appears that there is no much different in timings of lodging CR Nos.136/2020 and 137/2020, wherein against each other the parties are contending that the incident has taken place at about 8.00 to 8.30 pm on 2.8.2020. In the background of this incident, we are required to consider the allegations in the present CR i.e. CR No.135/2020. Therefore, though the present applicant is one of the accused in CR No.136/2020, wherein onlyailable sections are involved, that does not restrict the applicant from seeking anticipatory bail. As regards the points of timings of the offence or possibility of commission of crime in

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future by the applicant are concerned, appropriate directions can be issued. Hence, following order,

ORDER

i. The Criminal Application stands allowed;

ii. In the event of arrest of the applicant in connection with CR No.135/2020 dated 3.8.2020 for the offences punishable under Sections 354, 354-D of IPC and Sections 8 and 12 of POCSO Act, registered with Markhel Police Station, Tq. Degloor, District Nanded, he be released on PR of Rs.30,000/- with two sureties of Rs.15,000/- each.

iii. The applicant shall not commit any criminal activity nor shall he tamper with evidence of the prosecution.

iv. The applicant shall attend Markhel police, Tq. Degloor District Nanded on every Monday between 10.00 AM to 1.00 PM

v. The applicant shall not visit village Zari, Tq. Degloor District Nanded and Degloor city till conclusion of the trial.

vi. The applicant shall furnish his

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address of residence and his mobile/contact number as well as mobile number of his father and uncle to the concerned police station as well as the concerned Court.

(SMT. VIBHA KANKANWADI,J.)

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