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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.840 OF 2020

- 1) Vimal s/o Raosaheb Mokate
Age: 50 Yrs., occu.household,
- 2) Abhishek s/o Raosaheb Mokate
Age: 22 Yrs., occu. Educlation.

All R/o Imampur, Tq. Nagar,
District Ahmednagar

= APPLICANTS
(orig.Accused)

VERSUS

The State of Maharashtra
Through Police Station Office,
MIDC Police Station, Ahmednagar,
Tq. and Dist. Ahmednagar

= RESPONDENT/S

Mr. RR Karpe, Advocate for Applicant/s
Mr. SY Mahajan, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 8th December, 2020.

PER COURT:-

1. Present applicants are accused Nos.4 and 3 respectively in CR No.124/2020 dated 2.3.2020 with MIDC Police Station, Ahemdngar for the offences punishable under Sections 354-A, 452, 323, 504, 506, 354 read with 34 of IPC and Sections 8 and 12 of Protection of Children from Sexual Offences Act (for short, POCSO Act), as they are apprehending their arrest in connection with the

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aforesaid crime. They have filed the present application under Section 438 of Cr.P.C.

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

3. It has been vehemently submitted on behalf of the applicants that the contents of the FIR would show that at the most, role that is attributed to applicant No.1 is, giving abuses after allegedly trespassing into the house of the prosecutrix and as against applicant No.2, it is alleged that he had gagged the mouth of the prosecutrix and, therefore, physical custody of the applicants is not required. Taking into consideration the relationship between the parties, false implication of the applicants cannot be ruled out and which should be at the most of mother of the prosecutrix. Serious allegations have made against the father which are attributing the offences under Sections 354-A, 354 of IPC and under the POCSO Act. The learned Advocate, therefore, prayed for anticipatory bail.

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4. Per contra, learned APP strongly opposed the application by saying that at odd hours, present applicants had forcibly entered into the house of the prosecutrix and definitely it would have been with intention to commit the offence. At the same time, another accused, viz. Hrishi Jape had sat on person of the prosecutrix and pressed her breast and it was so happening in presence of the present applicants also. In fact, applicant No.1 is wife of Raosaheb Mokate, who is step father of the prosecutrix. Possibility of commission of similar offence by the applicants in future cannot be ruled out.

5. At the outset, it is to be noted from the contents of the FIR that the prosecutrix, who is 17 years old girl, states that her step-father, i.e. accused No.1, used to come to their house many times under the influence of liquor and he used to outrage her modesty and this had happened on 19.1.2020. She disclosed the said behaviour of her father with her to her mother on the next day as her mother had gone to Nasik. When accused No.1 went to their house at night time of 20.1.2020,

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mother of the informant asked him about his behaviour. At that time, accused No.1 had given threat to kill. The informant further says that after about eight days, accused No.1 had called her mother for harvesting Jawar at Imampur and, therefore, she had gone along with her mother to Imampur. At that time, accused No.1 and present applicants had manhandled and abused them and, therefore, they had returned to home. It is further stated that applicant No.1 had given the complaint against mother of the informant at Mahila Redressal Cell, Ahmednagar and connection with inquiry of that complaint, the prosecutrix and her mother went to Ahmednagar on 28.2.2020. According to the informant, the case was settled and when they came out, accused No.1 told mother of the informant that he would give money for household articles and, therefore, they should go. But, then the prosecutrix again says that when they were started to go to their house on Gajrao Nagar Pokhardi road, they were intercepted by accused No.1 and one Hrishi Jape. Mother of the prosecutrix was pushed and said Hrishi Jape dragged her on his vehicle and her father asked Hrishi to

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drop her to house. She thereafter says that at about 11.30 pm, when they were in sleep, at that time, in all seven persons barged into their house. Out of them Hrishi sat on her person and pressed her breast. Present applicant No.2 gagged her mouth and applicant No.1 abused mother of the informant.

6. Thus, after taking into consideration the contents of the FIR, it can be seen that the role attributed to the present applicants is that of abuse and gagging the mouth. Therefore, at the most, it would be covered under Section 452, 323, 504, 506 of IPC, which does not require any custody for the purposes of investigation. In view of this, the order of granting interim relief in favour of the applicant passed by this Court on 1.10.2020 deserves to be confirmed and made absolute. Hence, following order, -

ORDER

- i. The Application stands allowed;
- ii. The order passed by this Court on 1.10.2020, thereby granting interim relief in favour of the applicants, is

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hereby confirmed and made absolute.

iii. In other words, if the applicants are not arrested formally, in the event of arrest of the applicant in connection with CR No.124/2020 dated 2.3.2020, registered with MIDC Police Station, Ahmednagar for the offences punishable under Sections 354-A, 452, 323, 504, 506, 354 read with 34 of IPC and Sections 8 and 12 the POCSO Act, they be released on PR and SB of Rs.15,000/- each.

iv. The applicants shall not tamper with the prosecution evidence in any manner; shall cooperate with the investigation.

(SMT. VIBHA KANKANWADI,J.)

BDV