

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

ANTICIPATORY BAIL APPLICATION NO.539 OF 2020

Abdur Rahman Anjaria

....Applicant

V/s.

The State of Maharashtra

....Respondent

**WITH
INTERIM APPLICATION NO.1 OF 2020**

Noor Alam @ Babloo Matiuddhin Khan

....Intervenor

IN THE MATTER BETWEEN

Abdur Rahman Anjaria

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Rajiv Chavan Senior Advocate, a/w. Sumangala. Yadav, a/w. Aishwarya Yashwantrao, i/b. Sudha Dwivedi, for the Applicant.

Mr. Subhash Jha, a/w. Harekrishna Mishra, i/b. Law Global, for Intervenor.

Mr. Deepak Thakre (PP), a/w. S. R. Shinde, APP for the Respondent- State.

CORAM : PRAKASH D. NAIK, J.

DATE : 13th March, 2020

P.C.:

1. The applicant is apprehending arrest in C.R.No.25 of 2020 registered with Sakinaka Police Station, Mumbai, for the offence punishable under Sections 8 and 12 of Protection of Children from

Sexual Offences Act, 2012. The First Information Report ("FIR" for short") lodged on 21st January 2020.

2. The FIR was lodged by Noor Allam @ Bablu Matiuddin Khan, who is the relative of the victim. The victim is aged about 17 year. He is cousin of informant. Mother of victim informed the complainant that the victim is appearing to be quiet since last few days. On 19th January 2020, the informant took the victim into confidence. At that time, the victim told him that the applicant/accused is trying to develop acquaintance with the victim since last two years. He was trying to get close to him. In January 2019, the applicant accused called the victim at his office and had lascivious talk with him. The accused used to call the children from the locality and tell others to touch the 'App' on his mobile and verify who is potent and impotent. The applicant accused made the victim to touch his mobile App and told him that he is impotent. The other children laughed at him. On 10th November 2019 on account of "Idd", the victim was decorating house with lighting. At about 02:00 a.m the applicant/accused came in black motor car and called the victim and took him to Madrassa of Mufti Manzar. Thereafter, accused took the victim near Ghatkopar Station. The accused made provoking lascivious talk with the victim. He was taken near Ajmeri Masjid, it was closed. The applicant/accused took the victim in the lane near Sakinaka Metro

Station and halted the car. The accused made indecent talk with him. While in the car accused the opened the pant of the victim and took his private part in his hand. The victim resisted, accused made forcible touch. The victim started crying. The victim was threatened not to disclose the incident to anybody otherwise applicant/accused would malign his character. The victim was left near the house. After disclosure was made by the victim, it was decided to lodge the FIR, and accordingly complaint was made to the police.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions which was rejected by order dated 29th January 2020.

4. Learned senior Advocate representing the applicant submitted that the entire complaint is false. The allegation in the FIR are concocted. The applicant is falsely implicated in this case on account of political rivalry. Although the alleged incident had occurred in the night of 10th November 2019, the FIR was lodged on 21st January 2020. There is no plausible explanation for delay in lodging FIR. The applicant is office bearer of Vanchit Bahujan Aghadi. He has contested Lok Sabha elections parliamentary Constituency. He is involved in social work. He do not have any criminal antecedents. The complaint is outcome of political vendetta.

The complaint was not lodged by the victim or his parents. The complainant is relative of the victim. The complainant was acquainted with the applicant in the past. The political opponent from the rival political party is instrumental in framing the applicant in false case. He was threatened by politician who was under impression that, he has lost the election due to applicant. The explanation has given by the prosecution for delay in lodging complaint is that the victim was in a disturbed state of mind. However, the victim was active on social media even after the alleged incident. The applicant relied upon the relevant photo copies of documents to show that the victim was active on social media. It is submitted that the applicant was allegedly near Vikhroli Bus Depot on 10th November 2019 at around 1.10.17 hours. The prosecution case is that the victim was called by the applicant at about 2.00 a.m in the night of 10th November 2019. There is nothing on record to show that the applicant and the victim were together at the relevant time. The applicant do not own black car. There is no evidence in the nature of CCTV footage to show for the applicant and victim were together in the car at the place is referred to in the complaint. The prosecution has not deliberately verified, CDR of the victim and tower location to establish their case that victim was with the applicant on the date of alleged incident. There is no

corroborative evidence to show that the applicant had subjected the victim to sexual abuse as alleged in the complaint. Reliance is also placed on photographs which were tendered with the compilation of the documents to show that the complainant and the applicant were together in the past. It is submitted that, on account of political rivalry and to cause harm to the reputation of the applicant, false case has been registered against him, at the instance of the complainant. It is submitted that the itinerary of the applicant would show that, on the date of alleged incident, he could not have been with the victim and therefore, the question of committing the crime does not arise. It is submitted that, at around 4:30 a.m, on 10 November 2019, the applicant was in the house. According to him from 9th November 2019 till 11th November 2019, the applicant was in company with various other persons and at different locations. Therefore, allegations made against the applicant are concocted by the complainant and the victim. It is submitted that the place of incident, the place of residence and the place where the applicant was at relevant time can be ascertained with assistance of google map. The applicant was not in the company of the victim at the time of incident. The applicant is willing to co-operate with the investigation. He need not be subjected to custodial interrogation. It is submitted that before the registration of FIR, message was

received from Journalist on 21st January 2020, inquiring about Sakinaka mamla. This shows that there was conspiracy on account of political rivalry to implicate the applicant in false offence.

5. Learned APP submitted that, the offence is of serious nature. The statement of victim was recorded during the course of investigation. Specific overtact has been attributed to the applicant. The victim was sexually abused by the applicant. The cell phone of the applicant was switched off after 1:00 a.m. The applicant is prosecuted for the offence under the POCSO Act. The offence is of serious nature. The applicant is not entitled for relief under Section 438 of Cr.P.C. The version of the victim cannot be brushed aside by declaring that it is false. Prima facie case is made out. Statement of the victim is also recorded under Section 164 of Cr.P.C. There is sufficient evidence to show the involvement of the applicant in the crime. The complaint was received by Joint Commissioner of Police law and order, Senior Inspector of Sakinaka Police Station, which is under inquiry. The said complaint dated 02nd December 2019 was forwarded by Jamiat ulama, stating that, it is learnt from liable sources and from the print and electronic media that Madrassa Darul Uloom Ali Hasan Ahle Sunnat, Sakinaka admits students. Minor children are subjected to sexual and physical abuse by some

responsible people of the Madrassa. It submitted that, inquiry about the involvement of the applicant is going on.

6. Learned counsel for the intervener submitted that the offence is of serious nature. The applicant has been attributed role of sexual abuse. The victim is minor. The victim was in disturbed mind. The version of the victim cannot be disbelieved at this stage. The applicant cannot urge to hold mini trial while adjudicating his application for anticipatory bail. Prima facie case is made out. Investigation is in progress. Learned counsel relied upon the decision of the Apex Court in the case of ***Tomaso Bruno & Anr. V/s. State of Uttar Pradesh, (2015) 7 SCC, 178*** and ***P. Chidambaram V/s. Director of Enforcement (2019) 9 SCC 24.***

7. I have perused the documents. The investigation is in progress. Apart from the averments in the first information report, the statement of the victim was recorded under Section 161 of Cr.P.C on 22nd January 2020. The victim has specifically stated that, he was sexually abused by the applicant. The statement of the victim is also recorded under Section 164 of Cr.P.C. The version of victim cannot be brushed aside at this stage. According to prosecution, CDR indicates that on the date of incident the applicant was near Vikhroli Bus Depot at 1.10.17 hours. Tower location was

received by the investigating agency. It is also alleged that the accused/applicant had developed acquaintance with the victim. The accused used to have lascivious talk with the victim and others. He used to ask the victim and other children to touch the 'App' to understand whether they are potent or impotent. The conduct of the applicant had allegedly affected the mind of children. They were harassed by the applicant. It is also alleged that, the complaint was received from Jamiat Ulama about sexual abuse of children and the inquiry is going on. Considering the version of the victim in his statement and the investigation conducted by the police, the contentions of the applicant cannot be accepted at this stage. Hence, no case for grant of anticipatory bail is made out.

ORDER

- (i) Anticipatory Bail Application No.539 of 2020 stands rejected.

(PRAKASH D. NAIK, J.)