

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION (ST)
NO.7308 OF 2020

Apoorv Omkar Pande	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

...

Mr.Ranjeet Pawar for the Applicant.
Mrs.M.M. Deshmukh, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 22nd DECEMBER, 2020

P.C:-

1 The applicant is incriminated in C.R. No. 469 of 2020 registered with Baramati City Police Station which invoke Sections 341, 354, 354B, 452, 504, 506, 509 read with Section 34 of the IPC along with Sections 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). Barring Section 354 of IPC and Section 8 of the POCSO Act, all the other sections are bailable. As far as Section 452 of the IPC and Section 17 of POCSO are concerned, the applicant is not indicted.

2 The complaint is lodged by the prosecutrix, aged 17 years, pursuing her education. She has stated that when she used

to go for the tuition classes, the applicant who is her neighbour restrained her and expressed his love towards her. When she ignored him, he in an attempt to persuade her, held her right hand and expressed feelings of love towards her. The complainant alleged that she was scared and somehow escaped from his clutches. It is then alleged that she was threatened that he should not report the incident to anyone. It is also alleged that in the month of February, the applicant had forwarded messages on the mobile of her father which was used by her and text messages were also forwarded from different SIM numbers. It is stated that the applicant also threatened her that he would malign her image in her friend circle. An Instagram account is also alleged to have been opened by him in the name of the applicant on which her friends used to chat. It is further alleged in complaint that he used to send messages and by standing in front of her flat, he used to stare at her in a manner which would disgrace her and this is how it is alleged that he outraged her modesty. Attempts were made by the father of the complainant to pacify the situation and the applicant was given an understanding that he should not indulge into such act but he was persistent in his behaviour and he even threatened her father. It is alleged that he also went to the extent of saying that he was in love with the girl and he would entice her away. After going through the ordeal for almost 8 months, she approached the police station and lodged the complaint.

3 The applicant is aged 27 years and the submission is to the effect that he had expressed his love towards the informant, who is a girl in her adolescence, but he had no sexual intent. It was plain exhibition of his feelings, which, in any case, would not attract Section 12 of the POCSO Act since it make the act of sexual harassment punishable if it is made with sexual intent. In any case, the said section is bailable.

4 The application of the applicant has been rejected by the Sessions Court only on the ground of Section 8 of the POCSO Act being a non-bailable offence since it adumbrate that whoever committed sexual assault is liable for punishment either described of a term which shall not be less than three years but which may extend to five years is liable for fine. Section 7 of POCSO Act read as under :-

Section 7 “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”.

Perusal of the said section would reveal that whoever touches the parts of the body of a child as mentioned in the said section, or makes the child touch any part of such person as

mentioned in the Section or commits any act with the sexual intent, which involves physical contact without penetration is said to have committed sexual assault. The said section is imposed to cater to grave instances of sexual assault i.e. touching the private parts of the child or making the child touch the private part of such person or any other person. The words “ *or does any other act with sexual intent which involves physical contact without penetration*” will have to be read *ejusdem generis* with the first part of the said section and therefore, any physical touch inadvertently or without any sexual intent could not be brought within the sweep of the said section.

Prima facie, looking at the allegations levelled in the FIR, the applicant expressed his feeling of love towards the complainant by holding her hand on one occasion. This by itself cannot be said to be falling within the sweep of Section 7, since *prima facie* the ingredients of Section 7 are not made out in the wake of allegations in the complaint or attempting to contact her by use of electronic communication. Section 354D – Stalking has been inserted in the penal code by Act No.13 of 2013. Any man who follows a woman and contacts or attempts to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman commits the offence of Stalking. The said offence is made punishable on first conviction with Imprisonment of either description for a term which may extend to three years. This offence is bailable.

5 The learned APP Ms.Deshmukh make a feeble attempt to seek custodial interrogation for the purpose of tracing out the various sim cards from which the applicant had forwarded the messages to the complainant, in my opinion, this can very well be ascertained without custody of the applicant as the mobile numbers have featured in the complaint. The custodial interrogation of the applicant for the said purpose is not warranted. Subject to the stipulation that the applicant will in no manner pressurize the complainant, he is entitled for being released on bail in anticipation of his arrest. Hence, the following order :-

ORDER

Application is allowed.

- (a) In the event of his arrest, the Applicant – Apoorv Omkar Pande in connection with C.R. No. 469 of 2020 registered with Baramati City Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant will not enter into the area of Dalinde Nagar, Baramati, where the complainant is residing, till filing of charge-sheet.

- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (d) The Applicant shall make himself available as and when required by the Investigating Officer.

SMT. BHARATI DANGRE, J