

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 ANTICIPATORY BAIL APPLICATION NO.39 OF 2021

**SANTOSH S/O. BIRAJI @ DADASAHEB KHARAT
VERSUS
THE STATE OF MAHARASHTRA**

...
**Advocate for Applicant : Devakate Anant R
APP for Respondent State: Smt.R.PGaur**
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**CORAM : MANGESH S. PATIL, J.
DATE : 09.02.2021**

PC. :-

The applicant is seeking bail in the event of his arrest in connection with Crime No.339/2020 registered at Karjat Police Station, Dist.Ahmednagar, for the offences punishable under Sections 376, 354, 324, 452, 143,147,148,149,188,504,506 of I.P.C., Section 25 read with Section 4 of the Indian Arms Act, Sections 3 and 4 of Protection of Children from Sexual Offences Act 2012 ("POCSO Act" for short) and Sections 37(1), 37(3) and 135 of the Bombay Police Act.

2] The F.I.R. has been lodged by a girl aged about 16 years alleging about the applicant having entered into her house and committed rape on her on 11/5/2020. She further alleges that in the meanwhile her father arrived and having seen the incident assaulted the applicant with a stick whereupon he fled from the spot. It is alleged that after some time he again came back with other accused, armed with weapons and assaulted her father and paternal uncle. The F.I.R. was lodged on the same day and the offence was registered.

3] The learned advocate for the applicant would submit that in fact the applicant himself was assaulted brutally and was admitted in hospital for treatment. Taking advantage of that fact a concocted story is built up and a false F.I.R. is lodged. He would further point out that in respect of the bail applications by the other accused, the prosecutrix gave no objection for grant of bail to some of the accused persons in Criminal Miscellaneous Application No.355/2020 of the Court of Additional Sessions Judge, Shrigonda. The learned advocate would submit that the applicant is ready to cooperate in the investigation and may be granted protection.

4] The learned A.P.P. opposes the application. She submits that the F.I.R. has been lodged by a girl whose date of birth is 3/8/2003. It is highly improbable that a girl of that age would level allegations of this kind without there being any substance.

5] The learned A.P.P. would further submit that statement of the prosecutrix is also recorded under Section 164 of the Cr.P.C. and she has stuck to her version in the F.I.R. At this juncture there is nothing to disbelieve her. The offence being serious custodial interrogation of the applicant is highly imperative. The application be rejected.

6] I have carefully gone through the papers. There cannot be any dispute as to the date of birth in the light of the birth certificate of the prosecutrix. She is barely 16 years of age on the date of lodging of the F.I.R. She specifically alleges in the F.I.R. as well as in her statement under Section 164 of the Cr.P.C. about the applicant having entered into her house and having

committed rape.

7] Her version in the F.I.R. about her father having arrived and assaulted the applicant stands corroborated in the form of a counter F.I.R. lodged by the applicant wherein he alleges to have been assaulted by the father of the prosecutrix.

8] Considering the serious nature of the crime, the applicant cannot be granted anticipatory bail.

9] The Application is rejected.

[MANGESH S. PATIL, J.]

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