

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

911 ANTICIPATORY BAIL APPLICATION NO.276 OF 2021

ASHOK RAJENDRA GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.B. Narwade, Advocate for the applicant

Mr. A.V. Deshmukh, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st MARCH, 2021.

ORDER :

1 Applicant is apprehending his arrest, in connection with Crime No.154/2019 registered with Jawahar Nagar Police Station in Aurangabad City dated 10.04.2019, for the offence punishable under Section 363, 376 of the Indian Penal Code, 1860 and under Section 3, 4, 7, 8, 11(6), 12, 16 and 17 of the Protection of Child from Sexual Offences Act, 2012.

2 Heard learned Advocate Mr. N.B. Narwade for the applicant and learned APP Mr. A.V. Deshmukh for the respondent.

3 It has been vehemently submitted on behalf of the applicant that

the prosecutrix has not explained the delay in lodging the First Information Report. The alleged incident of rape is stated to have taken place in October, 2018, however, the FIR has been lodged in April, 2019. There is almost delay of six months. Name of the present applicant is not reflected in the FIR. It is against one Akash Sonawane, whereas the applicant is Ashok Gaikwad. In spite of this fact the police are harassing the relatives of the applicant. The grandmother of the applicant has also made complaint against the police to Superintendent of Police, Ahmednagar, where the applicant is residing. So also, one Jayshree Satish Jadhav has also made complaint to Commissioner of Police, Aurangabad, by stating that as the applicant is the relative, she is being harassed by police. Threats are given by the police that they would kill present applicant by showing encounter. Perusal of the FIR would show that there was sexual relationship between prosecutrix and said Akash Sonawane and now, since that person is absconding the present applicant is tried to be roped. Now, there is belated supplementary statement, that is, taken after five months, stating that present applicant had represented her that he is Akash Sonawane, but in fact, he is Ashok Gaikwad. Possibility of concocting the evidence against the present applicant cannot be ruled out, and therefore, he deserves protection under Section 438 of the Code of Criminal Procedure.

submitted that the prosecutrix is only 17 years of age and by pretending that the person loves her and introducing him as Akash Sonawane, he has done the heinous crime. Unfortunately the girl became pregnant and when the FIR was lodged her pregnancy was more than 28 weeks. The victim has given birth to a child. Now, DNA test will have to be conducted and for that purpose the custody of the applicant is required.

5 At the outset, it is to be noted that the prosecutrix has lodged a clear FIR. Though applicant says that it is belated, yet, it is to be noted that when the serious things became known to her, then only she has lodged the report. Whatever earlier sexual relations took place, at this moment, even if we say that they were by consent, but still we cannot forget that she is minor, and therefore, her consent is no consent at all. She might not have lodged report about those acts, but then, when she became pregnant, definitely, it was a serious matter. Further, it appears that the CDR of the mobile phones of the prosecutrix was taken and then name of the present applicant came to be revealed. If he had introduced himself by name Akash Sonawane, then that is also required to be investigated. Further, when the girl has now delivered a child, definitely, the custody of the present applicant would be required for the purpose of DNA test. Therefore, no case is made out to exercise the extraordinary powers of this Court under Section 438 of the

Code of Criminal Procedure. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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