

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

ANTICIPATORY BAIL APPLICATION NO.288 OF 2021

LAXMAN KHANDU RATHOD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. More P P
APP for Respondent/State: Mr. S.W. Mundhe

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CORAM : MANGESH S. PATIL, J.

DATE : 08.04.2021

PER COURT :

The applicant is apprehending his arrest in connection with Crime No.99/2020 registered with Maujpuri Police Station, Dist. Jalna for the offences punishable under Sections 363, 366-A, 212, 376 (2)(n) of the Indian Penal Code and Sections 5, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act'). The applicant is seeking bail in the event of his arrest.

2. In substance the allegations as can be found in the FIR and the statement of the victim who happens to be a girl aged 13 years, recorded under Section 164 of the Code of Criminal Procedure are to the effect that the main accused Anil Rathod had kidnapped her with a view to perform marriage and to have sexual relations and accordingly he took her to various places and sexually exploited her.

3. The allegations against the applicant are to the effect that he

facilitated and thereby abetted commission of the crime by enabling the main accused to procure job and places to hide at distant villages. The allegations are also about having facilitated him by providing a car for going away from the village while kidnapping the victim.

4. The learned advocate Mr. More for the applicant submits that the applicant is innocent. He is person providing agricultural labour. The main accused had requested him to provide employment and it is only under a *bona fide* belief that the applicant had secured a job for the main accused Anil at various places. There was no malice or *mens rea*. There is no material to show that even the applicant was aware that accused was under the guise of seeking employment was in fact indulging in the crime. The applicant is ready to cooperate the Investigating Officer in whatever manner possible. His custodial interrogation is not necessary. He has been involved only in one crime regarding breach of law and order, otherwise there are no criminal antecedents. He had not played any role in either kidnapping the minor or in commission of rape. He may be granted anticipatory bail.

5. The learned APP opposes the Application. He submits that the offence is serious. As far as the allegations of kidnapping and rape are concerned, the applicant is not directly related but he did abet commission of that crime by, firstly, providing a vehicle to the main accused Anil thereby helping him in taking away the victim from the lawful custody of her parents and, secondly, securing the employment at remote places, with a view to enable the main accused to keep away from the clutches of law. At this

juncture, since it is a serious crime under the POCSO Act, when active role is attributable to the applicant in helping the main accused, it would constitute abetment and his custodial interrogation would be necessary. The learned APP would further point out that there are statements of the witnesses and even the victim in her statement under Section 164 of the Code of Criminal Procedure has referred to the role played by the applicant in securing job.

6. I have carefully gone through the papers of the Investigation. True it is that so far as the offence of rape and offences under the POCSO Act are concerned, the applicant has not himself indulged in any of those acts.

7. However, there is enough material to corroborate the prosecution version about the applicant having *prima facie* abetted the main accused in hiding and keeping away from law. In the statement of Rahul Machindra Kakde who is an agriculturist from village Takli Tq. Karmad is stated that it is the applicant who had telephonically informed him informing that there was a couple, who had recently married, in search of some work and to secure a job for them. It is thereafter that in turn this Rahul Kakde had with his acquaintance Gani Bhai, a building contractor could manage to secure a job for the couple. The statement of Gani Abdul Shaikh also corroborates this fact. Similarly, even there are statements of one Ajit Pandurang Jagtap an agriculturist from village Rajuri Tq. Karmad to the same effect. Further, there are statements of one Bhima Ishwar Mane, Machindra Madhukar Sudrik specifically mentioning that it is the applicant

who had telephoned them requesting them to get employment for the couple.

8. In addition, there is a statement of the victim recorded under Section 164 of the Code of Criminal Procedure, wherein she has also attributed a specific role to the applicant on the same lines. *Ex facie*, it cannot be a sheer coincidence, that so many persons are coming forth with a specific statement about the applicant having requested them to secure employment for the couple i.e. the main accused and the victim, even by pretending that they were recently married.

9. In my considered view, at this juncture, the material is sufficient enough to reveal role played by the applicant in abetment of the crime.

10. Obviously, custodial interrogation of the applicant would be necessary to complete the investigation.

11. The Application is rejected.

(MANGESH S. PATIL, J.)