

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

**ANTICIPATORY BAIL APPLICATION NO.567 OF 2021
WITH APPLN/1161/2021 IN ABA/567/2021**

1] RAMDAS BABURAO GADEKAR
2] SARANG @ SARANGDHAR BABURAO GADEKAR

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Jadhav Mangesh R.

APP for Respondent/State : Mr. V.M. Kagne

Advocate for Assist to APP : Mr. Gore Ravindra Vitthal

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CORAM : MANGESH S. PATIL, J.

DATE : 17.06.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicants are apprehending that they would be arrested in connection with Crime No.88/2021 registered with Wadodbazar Police Station, District Aurangabad for the offence punishable under Section 354 read with Section 34 of the Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act).

2. The FIR has been lodged by a girl aged between 16 and 17 years alleging that when she had gone to a field for answering nature's call, both the applicants harassed her and in the process torn the sleeves of her Kurta. She along with her maternal uncle went to the Police Station and lodged the FIR and the offence came to be registered.

3. The learned advocate for the applicants would submit that there has been a long standing dispute between the applicants on the one hand and the maternal uncle of the informant. The dispute is not only civil but criminal as well. He submits that because of such long standing dispute a false and fabricated case is being made up to implicate the applicants. They are ready to co-operate the Investigating Officer. Their custodial interrogation is not necessary. There is serious doubt if the informant is a minor. Necessary ingredients for constituting the offence punishable under Section 354 of the Indian Penal Code and the Section 12 of the POCSO Act cannot be made out. The ad-interim anticipatory bail therefore may be confirmed.

4. The learned APP assisted by the learned advocate for the original informant opposes the application. He submits that the offence is serious. It is an offence punishable under Section 12 of the POCSO Act and in view of the presumption available under the Act, the discretionary relief may not be granted. He would submit that an ossification test has been under taken and shows that the informant is indeed a minor.

5. He would further point out that a statement of the informant has been recorded under Section 164 of the Code of Criminal Procedure, wherein she has specifically repeated the allegations. He would therefore pray for rejection of the application.

6. I have carefully gone through the papers of the investigation. Since there is a report pursuant to an ossification test certifying that the

informant is aged between 16 to 17 years, at this juncture one need not delve much about it and can safely proceed on the premise that she is a minor and the provisions of the POCSO Act attract.

7. However, on careful perusal of the FIR as also the statement of the victim recorded under Section 164 of the Code of Criminal Procedure would demonstrate *prima facie* that there are no specific and clear allegations to reveal and attribute sexual intent on the part of the applicants. The FIR merely reads about the incident being a “Ched Chad” which may not necessarily convey intention of the applicants. In the statement under Section 164 conspicuously even the informant has omitted to state that there was any such harassment (Ched Chad).

8. It appears that there has been a dispute between the maternal uncle of the informant and the applicants. Pertinently it is the maternal uncle who had accompanied her to the Police Station while lodging the report.

9. Coupled with the above state of affairs, it is equally important to note that there has been a long standing dispute between the two sides. The applicants made an attempt to carry out the constructions over their property which was objected to by the maternal uncle of the informant and the dispute had reached civil and criminal courts.

10. Considering all the aforementioned state of affairs, when the applicants have already been protected by way of an ad-interim relief by the speaking order dated 04.06.2021 and when there are no allegations about

any breach of the terms and conditions subject to which the interim relief was granted, in my considered view the ad-interim relief deserves to be confirmed with the same terms and conditions.

11. The Application is allowed. The ad-interim relief granted by the order dated 04.06.2021 stands confirmed with the same terms and conditions with a clarification that the condition regarding attendance would cease on filing of the charge sheet.

(MANGESH S. PATIL, J.)

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