

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

ANTICIPATORY BAIL APPLICATION NO.574 OF 2021

Supadu Makadu Sonawane .. APPLICANT

VERSUS

State of Maharashtra. ..RESPONDENT

AND

ANTICIPATORY BAIL APPLICATION NO. 575 OF 2021

1. Balu Namdev Chate

2. Vithal Bhagwat Patil ..APPLICANTS

VERSUS

State of Maharashtra. ..RESPONDENT

...
Mr.S.S.Chitre, Advocate for the applicants in both applications.

Mrs.G.P.Raur, APP for the respondent-State in both applications.

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**CORAM: MANGESH S. PATIL, J.
DATE : 22.06.2021**

P.C.

1] The applicants are the accused in Crime No. 32/2021 registered with Nashirabad Police Station, Taluka and District Jalgaon, for the offences punishable under

Section 447, 354-A, 323, 504, 506 of the IPC and 12 of the Protection of Children from Sexual Offences Act, 2012, apprehending their arrest now they are seeking bail in the event of their arrest.

2] The allegations are to the effect that the informant along with his minor daughter were present in their field where watermelon crop was standing. The applicants, who were passersby in a car, insisted for giving some watermelons. They forcibly took 9 watermelons costing Rs.800/-. When the informant insisted for payment, they refused and therefore he took back watermelons whereupon they assaulted him. It is alleged that in the process one of the applicants also made gesture by pointing towards his private part and looking at the minor daughter of the informant. The FIR was lodged on the next day and the offence was registered.

3] I have heard the learned Advocate for the applicants as also learned APP for the respondent-State and perused the papers of the investigation. Needless to state that the only non-bailable offence being leveled against the applicants is the offence punishable under Section 12 r/w. 11 of the POCSO Act. It presupposes that there is some gesture made by the applicants with a sexual intent. Sexual intent being the main ingredient, when a query was put to the learned APP as to the stand of the child during her statement

under Section 164 of the Criminal Procedure Code, the learned APP submits that in her statement she has not whispered about such gesture having been made by any of these persons.

4] True it is that the FIR and the couple of other witnesses do state in their statements about such gesture having been made by one of these persons. However, considering the nature of the crime, it is for the minor victim to perceive that there was any such sexual intent while making the gesture which she had an occasion to see.

5] However, in her statement under Section 164 of the Criminal Procedure Code she has not uttered anything about having seen any of them making any gesture *muchless* with sexual intent *albeit* she has described the rest of the incident.

6] Considering the above state of affairs, the applications deserve to be allowed.

7] The applications are allowed. In the event of arrest of the applicants in connection with Crime No. 32/2021 registered with Nashirabad Police Station, Taluka and District Jalgaon, for the offences punishable under Section 447, 354-A, 323, 504, 506 of the IPC and 12 of the Protection of Children from Sexual Offences Act, 2012, they shall be

released on bail on their executing personal recognizance for an amount of Rs.15,000/- [Rs. Fifteen Thousand only] each and furnishing a solvent surety in the like amount each, subject to following conditions:

- (a) They shall attend the concerned Police Station as and when called by the Investigating Officer and shall co-operate him.
- (b) They shall not tamper the evidence or influence the witnesses.

[MANGESH S. PATIL, J.]

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