

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

**ANTICIPATORY BAIL APPLICATION NO.797 OF 2021
WITH
CRIMINAL APPLICATION NO. 1568 OF 2021**

Ashok s/o Keshav Patil ... **Applicant**
Age 65 years, Occu: Agriculture,
R/o Nandre Pr. Lohare,
Pahur, Tq. Jamner, District Jalgaon

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Station Officer,
Police Station Pahur, Dist. Jalgaon
2. Roshni w/o Ravindra Patil
Age 27 years, Occu: household,
R/o Shelgaon, Jamner
Tq. Jamner, Dist. Jalgaon

Mr. S. G. Chapalgaonkar, Advocate for the applicant,
Mrs. Vaishali S. Chaudhari, A.P.P. for the State.
Mr. A.M. Gholap, Advocate, assists to PP.

CORAM : V. G. BISHT, J.
DATE : 17th August, 2021.

ORDER:

1. Criminal application No. 1568/2021 is filed by the informant seeking leave to assist the Public Prosecutor. Leave granted. Criminal application stands disposed of.
2. Main application under section 438 of the Code of Criminal Procedure, 1973 is preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.186/2021, registered with Pahur Police

Station, District Jalgaon for the offences punishable under Sections 376 AB of the Indian Penal Code, 1860 and Sections 5(m), 5(n) and 6 of Protection of Children from Sexual Offences Act, 2012.

3. It appears from the first information report that one and half year prior to lodging of the said first information report, the informant and her husband had been to field. Informant's younger daughter-victim was left with informant's father-in-law i.e. the present applicant. When they returned in the evening, the victim informed the informant that the applicant had inserted his fingers in her private parts. The informant accordingly apprised her husband but her husband did not confront his father.

4. Mr. S. G. Chapalgaonkar, learned advocate for the applicant, submitted that the present applicant has been roped in because of the matrimonial dispute between the informant and her husband. The learned counsel invited my attention to the complaint dated 14.05.2021 made by the informant's husband against the present informant to Pahur Police Station, Pahur Tq. Jamner, District Jalgaon and pointed out parts of the complaint, wherein, father of the informant and other relatives had threatened him that if the informant is not taken for cohabitation then they would implicate him under Sections 377, 376, 354, 498(A), 324, 323, 504, 506 read with 34 and also against his father under the relevant provisions of POCSO Act. The learned counsel then forcefully submitted that only after filing of the said complaint,

the first information report in question came to be filed. The learned counsel further submitted that there is delay of more than one and half years in lodging the first information report. The applicant is 65 years old man and is a respectable person in the society. Even otherwise, there is no necessity of his custodial interrogation. There is also no possibility of tampering evidence and hence, the present application deserves to be allowed.

5. Mrs Vaishali S. Chaudhari, learned A.P.P., opposed the submissions by contending that there are direct and specific allegations against the present applicant and thus, the present application does not deserve consideration.

6. Mr. A. M. Gholap, learned counsel for the informant/respondent No.2, submitted that husband of informant was duly aware of the incident which was apprised by the informant wife. According to the learned counsel, the facts narrated in the complaint clearly shows that there is no delay as such. Having regard to the nature of offence and the fact that the victim, at the relevant time, was six years old, the present application does not deserve consideration.

7. On going through the papers made available on record, there is no dispute to the fact that the present informant and her husband had serious matrimonial dispute initiated by them against each other. The first information report itself would reveal that the alleged incident of sexual assault on victim took place more than one and half years ago

from the time of lodging of complaint for which there is no explanation much less satisfactory explanation. Although the learned counsel for respondent No.2/informant submitted that factual details are given in the first information report itself but in my considered opinion those factual details do not, in any manner, further the cause of delay inasmuch as having regard to the strained relationship between the informant and her husband, rather she ought to have filed the first information report with all promptitude. But it was not done. On the contrary, it is only after filing of complaint by the informant's husband against the informant, the present first information report came to be filed.

8. Having regard to the facts and circumstance of the case, custodial interrogation is not necessary and for the aforesaid reasons, the applicant deserves pre-arrest bail.

9. In view of above, the application is allowed.

10. Interim relief granted by this Court on 28.07.2021 is made absolute and is confirmed.

(V. G. BISHT, J.)

JPC