

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

17 ANTICIPATORY BAIL APPLICATION NO.968 OF 2021

AVINASH ANNASAHEB BANSODE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Angad Kanade, Advocate for the applicant.
Mr. A.V. Deshmukh, A.P.P. for respondent - State.
Mr. Rajendra Chavan, Advocate appointed for respondent No.2.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 13-12-2021

ORDER :

1. The applicant is apprehending arrest in Crime No.431/2021 registered with M.I.D.C. Police Station, Latur for the offences punishable under Sections 376 (2), 506 of the Indian Penal Code and under Sections 3, 4 and 11 (5) of The Protection of Children from Sexual Offences Act.

2. The case of the prosecution is that, the victim is aged about 17 years. On 16th July 2021, while her mother was on duty and she was alone in the house, the applicant had visited her house. He entered into the house and closed the door. The victim questioned him about his visit. Accused questioned her as to why she is not responding to his calls made on the cell phone given to her by him. If she do not have any conversation with him, he would show the videos recorded by him to her mother and would also make it viral on facebook. Thereafter the accused took the victim in

the bedroom and had forceful sexual intercourse. The First Information Report (for short "F.I.R.") was lodged on 17th July 2021.

3. The interim protection was granted to the applicant vide order dated 8th October 2021. The applicant was directed to appear before the Investigating Officer on 20th, 21st and 22nd October 2021 between 11.00 a.m. and 1.00 p.m. He was also directed to hand over cell phone to the Investigating Officer. Learned Advocate for the applicant, on instructions, submitted that the cell phone has been handed over to the Investigating Officer and the applicant has complied the directions of reporting.

4. The submission of learned Counsel for the applicant is that, the F.I.R. is false. The victim and accused were in relationship. On account of caste differences, the parents of the victim were opposing the relationship and at the instance of the mother of victim, the F.I.R. has been registered. He submitted that there are Whats-App messages and telephonic calls between victim and the applicant, which clearly indicate that they were in relationship. Although the victim was minor, she was aged about 17 years, which is the age of understanding. Custodial interrogation of the applicant is not necessary.

5. Learned A.P.P. submitted that the F.I.R. does not indicate that there was any relationship between the applicant and victim. The victim was subjected to forceful physical relationship. Statement of the witness has been recorded wherein he has stated

that he had seen the applicant entering into the premises of the victim. Medical evidence supports the prosecution case. The victim was examined by the Medical Officer.

6. Learned Counsel appointed for the complainant submitted that specific allegations are made against the applicant in the F.I.R. It was not consensual relationship. Accused had forcefully entered into the house of the victim and had forceful physical relationship with her. There was threat to the victim that the accused would show video recording made by him to her mother or would make it viral on social media. The provisions of Information and Technology Act are also attracted in this case. The victim was minor at the time of incident. Hence, this application may be rejected.

7. On perusal of F.I.R. it can be seen that the informant (victim) has alleged that the incident in question had occurred on 16th July 2021. The F.I.R. also mentions that the accused, after entering into the premises, had questioned her as to why she is not responding to his calls made on the cell phone given to her by the applicant. The tenor of the F.I.R. would indicate that the applicant and victim were known to each other. They were having conversation. The statement of one of the witnesses was recorded on 18th July 2021 wherein it is stated that on 16th July 2021 he had seen the applicant entering into the house of the victim and that the victim disclosed him the incident occurred on that day. Assuming that the applicant was seen entering into the house of the victim,

from the documents on record it appears that the victim and applicant were acquainted with each other. The medical examination of the victim was conducted. Medical case papers indicate history provided by the victim, wherein it is stated that she was in relationship with the applicant / accused and they were in love relationship and having physical relationship with consent since two years. The victim did not give any history of physical assault. There is no history of any unnatural sexual assault. The victim has also stated that she broke up with the accused. Accused used to threaten her about her photographs and videos. It is also pertinent to note that the cell phone is already recovered by the Investigating Officer. The victim was of the age of understanding, In these circumstances, this application can be allowed. Hence, the following order.

ORDER

- (i) ABA No. 968 of 2021 is allowed.
- (ii) Interim order dated 8th October 2021 is confirmed.
- (iii) In the event of arrest of the applicant in Crime No.431/2021 registered with M.I.D.C. Police Station, Latur, the applicant be released on bail on executing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- (iv) Applicant shall not tamper with the evidence. He shall not approach the victim.

- (v) Applicant shall appear before the Investigating Officer as and when called for, till filing of the charge-sheet.
- (vi) The application stands disposed of.

(PRAKASH D. NAIK, J.)

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