

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 ANTICIPATORY BAIL APPLICATION NO.1031 OF 2021

BALASAHEB SHANKAR CHOURE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. P.G. Tambade, Advocate h/f.
Mrs.Arati N. Bramhanathakar
APP for Respondents: Mr. N.T. Bhagat.
Advocate for respondent No.2 : Ms. Shital E. Waghmare.
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CORAM : PRAKASH D. NAIK J.

DATE : 26TH OCTOBER, 2021.

PER COURT:

1] The applicant is seeking pre-arrest bail in Crime No. 78 of 2021 registered at Sonpeth police station, taluka Sonpeth, Dist. Parbhani. The FIR was registered on 20th April, 2021 for the offence under Section 363, 376(f), 376(D) r/w. 34 of IPC.

2] The case of the complainant is that, his daughter aged about 16 years and 6 months was missing from the house. The applicant is the neighbour of complainant. Naresh Choure is the son of applicant. Anuja Jaybhaye is the niece of Laxman Choure, who is also the neighbour of the complainant. Krishna Gite is nephew of Laxman Choure. On 16.4.2021, Krishna Gite had visited the house of Laxman Choure. The victim left the house on 17.4.2021. Naresh Choure, Anuja Jaybhaye and Krishna Gite were also not seen from that day. Subsequently, the victim and the accused returned to the

village. The statement of the victim was recorded under Section 161 of Cr.P.C. on 23.4.2021. The supplementary statement of the victim was recorded on 26th April, 2021 and 27th May, 2021. Her statement was recorded under section 164 of Cr.P.C. The role that is attributed to the applicant is that, he had assisted and/or abetted the co-accused in enticing the victim to accompany the other accused.

3] The applicant had preferred an application for anticipatory bail before the court of sessions, which has been rejected by order dated 25th May, 2021

4] The learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. He has not played any role in the alleged offence. On account of animosity between the applicant and complainant, the applicant has been falsely implicated in this case. The victim was tutored by the complainant to implead the applicant as accused in the case. The alleged role of kidnapping the victim from lawful guardianship, subjecting her to physical relations, taking the victim to other places, has been attributed to the other accused. Custodial interrogation of the applicant is not necessary. The victim has improvised her version. In the subsequent statement she has implicated the applicant as a person who helped the other accused in committing the crime.

5] The learned APP submitted that the investigation is in

progress. Statements of witnesses were recorded. Statement of victim was recorded under sections 161 and 164 of Cr.P.C. The victim has attributed specific role to the applicant. The victim was minor who was subjected to sexual assault. The offence is of serious nature. Custodial interrogation of the applicant is necessary.

6] The learned counsel for complainant has reiterated the submissions of learned APP. In addition, it is submitted that the accused were involved in enticing the victim. She was not disclosed as to where they are supposed to go. She was taken to other places and the accused had subjected victim to forcible sexual relationship. All the accused have acted in connivance with each other. Hence, the application may be rejected.

7] The FIR, as stated above, refers to the fact that the victim was sleeping in the house. The complainant woke up at about 4.00 a.m. on 17.4.2021 and noticed that the victim was not in the house. Since the victim did not return home, he informed about this fact to his wife and thereafter search was conducted to trace the victim. They could not succeed. It was suspected that the victim has been kidnapped by the accused. The co-accused were not seen in the village. Hence, the FIR was registered. The investigation proceeded. Subsequently, the victim and accused returned to the village. Statement of the victim was recorded under Section 161 of Cr.P.C. on 23rd April, 2021. In the said statement, she has narrated

the sequence of events. She has stated that she was enticed by the accused to join them and at about 2.00 a.m, the victim had left her house and accompanied the accused. They travelled in the vehicle of co-accused. She was subjected to physical relationship by Krishna Gite. In the said statement, there is no reference to the involvement of the applicant in any manner. Subsequent statement of the victim was recorded on 26.4.2021. There is improvisation in the said statement and addition of new facts. Even, the said statement does not implicate the applicant in any manner. Thereafter, statement was recorded on 4.5.2021, wherein, she has reiterated her version and narrated the incident of sexual assault. Even this statement does not show the involvement of the applicant. Statement of the victim was recorded under Section 164 of Cr.P.C. on 5.5.2021. Apparently, in the said statement, she has stated that applicant was standing near the wall of lake at the outskirts of the village and that the applicant had parted some amount to Naresh and told them to go out of the village and in the event they require any money, they should inform him. They should not return to the village. Thus, the role that has been attributed to the applicant is that he had provided money to the co-accused. The involvement of the applicant is neither reflected in the FIR and the first 3 statements of the victim recorded under Section 161 of Cr.P.C. The victim, for the first time, has alleged in the statement recorded on 5.5.2021 that the applicant has provided finance to his son.

8] Considering the factual aspects as stated above, the case of custodial interrogation of the applicant is not made out. The application deserves to be allowed. Hence, the order :-

: O R D E R :

[i] Anticipatory Bail Application No. 1031 of 2021 is allowed.

[ii] In the event of arrest of the applicant in connection with Crime No. 78 of 2021 registered with Sonpeth police station, Dist. Parbhani, the applicant be enlarged on bail on furnishing PR Bond in the sum of Rs. 25,000/-, with one or two sureties in the like amount.

[iii] The applicant shall appear before the I.O. on 8th, 9th and 10th November, 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called by the I.O.

[iv] The applicant shall not tamper with the evidence.

[v] The applicant shall not enter into the vicinity of the residence of the complainant/victim.

[v] The application stands disposed of.

**[PRAKASH D. NAIK]
JUDGE**

GRT/-