

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

926 ANTICIPATORY BAIL APPLICATION NO. 1149 OF 2020

**VIJAY MARUTI DADAR
VERSUS
THE STATE OF MAHARASHTRA**

Advocate for Applicant : Mr. S.S. Jadhav.
APP for Respondent : Ms. R.P. Gour.

**CORAM : MANGESH S. PATIL, J.
DATED : 22.01.2021**

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicant is apprehending his arrest in Crime No. I-23/2019, registered with Jamkhed Police Station, District Ahmednagar, for the offences punishable under Sections 376-A, 376-B, 324, 504, 506 of the Indian Penal Code and Sections 3, 4, 11, and 12 of the Protection of Children from Sexual Harassment Act.

2. Heard both the sides.

3. In the normal course, palpably the offence being grave and serious, the Court would be reluctant to grant anticipatory bail in such matters. However the matter presents some peculiar state of affairs which compels the request of the applicant to be considered favourably.

4. The FIR has been lodged on 14.01.2019 by the mother of a child studying in 05th standard stating that the main accused Balaji was her neighbour had raped her on 12.01.2019. It also reads that the child also disclosed to the mother that even thereafter she was called by Balaji on the next day and was threatened of dire consequences at the point of the knife, if she disclosed the incident to anybody. On the basis of such FIR the offence was registered. The investigation proceeded. Statement of the victim was recorded under Section 161 of the Cr.P.C. on 14.01.2019, wherein she disclosed the same state of affairs. The statements of the parents of the child as well as the child were recorded under Section 164 of the Cr.P.C. before Judicial Magistrate on 18.01.2019. Needless to state that all of them deposed in same manner corroborating the allegations in the FIR.

5. It appears that thereafter on 19.01.2019 i.e. the day after the statements were recorded under Section 164 of Cr.P.C., supplementary statement of the informant was recorded wherein she came out with a version about the girl having disclosed to her on 16.01.2019 about even the applicant having committed rape on her and raped her since September 2018 from time to time.

6. Without intending to cast any aspersions on the veracity of the

informant, the sequence of events presents an illogical state of affair.

7. If the child had disclosed the role of the applicant to her mother on 16.01.2019 and the statements of the mother i.e. informant and her husband were recorded before the Judicial Magistrate on 18.01.2019, one cannot comprehend as to how and why both of them had not disclosed before the Magistrate the disclosures made to them by the child on 16.01.2019. Further it is also not clear as to why and how the Investigating Officer failed to record the statement of the child again under Section 161 of the Cr.P.C. or got it recorded as an additional statement under Section 164 of the Cr.P.C, after recording of such supplementary statement of the mother on 19.01.2019.

8. Whatever may be the case, going by the state of affairs discussed herein above, in my considered view, the ad interim relief granted to the applicant by the order dated 15.12.2020, deserves to be confirmed with the same terms and conditions.

9. Application is allowed. Ad interim relief granted to the applicant by the order dated 15.12.2020, stands confirmed with the same terms and conditions.

(MANGESH S. PATIL, J.)