

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 ANTICIPATORY BAIL APPLICATION NO.1174 OF 2020

LAKHAN BHAIRAVNATH DHOBALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Abhishek Kulkarni, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondents/State

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th JANUARY, 2021.

ORDER :

1 The applicant is apprehending his arrest, in connection with Crime No.218/2020 dated 29.10.2020 registered with Lohara Police Station, Dist. Osmanabad, for the offence punishable under Section 354-A, 354-D, 506 of the Indian Penal Code and under Section 11 and 12 of the Protection of Children from Sexual Offences Act, 2012, and therefore, he has filed present application under Section 438 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. Abhishek Kulkarni for the applicant and learned APP Mr. S.Y. Mahajan for respondents/State.

3 It has been vehemently submitted on behalf of the applicant that the information has been lodged by the minor's mother and thereafter the applicant had approached the Court of Sessions at Omerga for pre-arrest bail, however, his application came to be rejected on 11.11.2020. Thereafter on 12.11.2020 there is an amicable settlement between the first informant and the parents of the applicant stating that they have no complaint and they do not want to proceed with the matter. It is also stated that they are ready to withdraw the complaint. It has been stated in the document of compromise that due to the act of applicant the marriage of their daughter has been cancelled, which pre supposes that though the girl is stated to be minor she is of understandable age. It is also submitted that even if the allegations in the First Information Report are taken as it is, they do not constitute any offence, no specific overt act is attributed to the applicant. Much less the offences under the POCSO Act are not attracted, since there was no physical contact between the victim and the applicant. The learned Advocate for the applicant also submitted that the applicant and the victim were in love relationship and they were calling and chatting each other on mobile. They were knowing each other since many days and had become close friends. They used to exchange SMSs and WhatsApp chat. They had decided to marry but when this fact was brought to the knowledge of the parents of the victim, with some mala fide intention the mother lodged the report against

the applicant. Physical custody of the applicant is not necessary. The applicant is a driver by profession and also he is an agriculturist. Entire family depends upon his income. He has no criminal antecedents, and therefore, he deserves to be released on pre-arrest bail.

4 Per contra, the learned APP strongly opposed the application and submitted that as per the FIR, the girl is a minor and taking disadvantage of the minority of the girl the applicant appears to have indulged her in such activities and now he is taking disadvantage of the alleged chats. He does not deserve the relief, which is in the discretion of this Court.

5 At the outset, it is required to be seen what are the contents of the FIR, which is lodged by the mother of the victim. She has stated that she resides with husband and two daughters. The victim was studying in 10th standard and due to her Online studies (definitely due to pandemic situation) she was given a new mobile phone. She was receiving phone call from a mobile and it is alleged that the said person was stating obscene facts. The informant used to say to that person that he should not give a phone call; yet, he used to give phone call. Thereafter, on 28.10.2020 at about 4.00 p.m. the girl disclosed that again she has received phone call from the same number. That person was talking with her in obscene manner and abusive language. When she was informing the said fact, at that time, again the phone call from

the same number came. At that time, the mother asked that person about his name and address. He was the applicant. The informant asked him, as to why he is calling her daughter. At that time, the applicant told her that he loves the daughter and she should be given in marriage to him, otherwise he would do something with his life. Informant then got angry with him and told, he should not contact on the same phone again. Thereafter, after consulting her husband and relatives she has lodged the report on the same day.

6 The applicant is now coming with a case that there was love relationship between him and the victim. This pre supposes that he has knowledge about the minority of the girl. He is a major person and should understand that he should not take disadvantage of the minority of the girl. The fact, which is more disturbing is that his pre-arrest bail application was rejected by the learned Additional Sessions Judge on 11.11.2020 and on the next day he says that there is a compromise between the parents of the victim and he himself. That means, he has already taken steps to tamper with the evidence of the prosecution. One more aspect to be noted is that the parents of the victim i.e. informant and her husband appeared to be illiterate, as they have impressed only their thumb impression. Possibility of taking disadvantage by the applicant cannot be ruled out. So also, the possibility of

alleged compromise entered into, by pressurizing tactics, also cannot be ruled out. As regards the alleged chats are concerned, it is for the applicant to prove at the time of the trial. When the applicant has involved himself in such activities, he deserves no discretion. The powers under Section 438 of the Code of Criminal Procedure are required to be exercised in exceptional circumstances. Here, the applicant has already started the act of tampering. Hence, his application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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