

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 315 OF 2020

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Sherkhan Sardar Khan

...Applicant

vs.

The State of Maharashtra
& Anr.

...Respondents

WITH

INTERIM APPLICATION NO. 911 OF 2020

IN

ANTICIPATORY BAIL APPLICATION NO. 315 OF 2020

Shabana Sherkhan Khan

...Applicant

vs.

The State of Maharashtra
& Anr.

...Respondents

Mr.Rahul Arote for applicant.

None for applicant in IA/911/2020.

Mr.S.H. Yadav, APP for State.

P.I. Dattaram Vitthal Girap, Ghatkopar Police Station, Mumbai.

CORAM :

N. J. JAMADAR, J.

DATE :

18th DECEMBER, 2021

ORAL ORDER :

1. Heard Mr.Rahul Arote, the learned counsel for the applicant and Mr. Yadav, the learned APP for the State.

2. The applicant has preferred this application for pre-arrest bail apprehending arrest in C.R. No. 800 of 2019, registered with Ghatkopar Police Station, Mumbai for the offences punishable under section 354 C of the Indian Penal Code, 1860 ('Penal Code') and sections 8 and 12 of the Protection of Children from Sexual

Offences Act, 2012.

3. The first informant, who is the former wife of the applicant, lodged the report against the applicant with the allegation that on 17th November 2019, while she was browsing through the videos pertaining to her birthday, which was celebrated on 1st November 2019, she noticed a video of the victim, her 17 year old daughter, taking a bath. Upon further browsing, it transpired that there were multiple videos of the victim taking the bath. Those videos were allegedly shot by the applicant and shared on the mobile phone of the first informant. It was alleged that since the quality of the video shot by the mobile phone of the applicant was poor, the latter used to transfer those videos on the mobile phone of the first informant and, thereafter, view those videos. The first informant also alleged that on 18th November 2019, the victim called her from the mobile phone of Laxmi, the house-maid, and complained that the applicant was harassing the victim with reference to the relations which the victim allegedly had with a boy. Hence, first informant lodged report.

4. The applicant approached the Court with a case that there was a marital discord between the applicant and first informant, which eventually led to disruption of the marital bond and the

marriage between the applicant and the first informant was dissolved on 14th November 2019. To wreak vengeance, the first informant lodged a false report levelling highly improbable allegations. The alleged incident occurred in the month of June 2019. However, report was not lodged until the divorce between the applicant and the first informant.

5. By an order dated 7th February 2020, this Court was persuaded to grant interim relief opining, *inter-alia*, as under :

“6 The applicant’s wife had alleged that her husband shot video of her daughter while taking bath in June 2019. However, she saw it for the first time in or around in November 2019, only after she took divorce from him. It appears, on 1st November 2019, every member of the family had celebrated birthday of the complainant, but till 21st November 2019, the daughter did not divulge this fact, which according to the applicant’s counsel seems not probable. Additionally, it appears, when statement of victim was recorded on 11th December 2019, she alleged that on 17th July 2019, she was subjected to sexual assault (aggravated penetrative assault) by the applicant. This allegation was surprisingly missing in the complaint filed by the victim’s mother on 21st November 2019. After reading the complaint and the statement of the victim, prima facie, the allegations of sexual abuse allegedly inflicted do not appeal to the reasonable mind, because of the relationship between the complainant, the victim and applicant. In my view, age of the victim (17 years) equally is a relevant fact, as well. It may be stated that age of the victim is relevant factor because she had capacity to understand right and wrong acts. However, she had chosen to remain silent for over few months, though she was sexually exploited by her father in July 2019. This conduct of the victim, prima facie, is not digestible.

Be that as it may be, the learned counsel for the applicant has submitted that the applicant has been falsely implicated in the case, since he was not approving / accepting his daughter’s love affair. In my

view, this defence of the applicant cannot be looked at this stage.”

6. Mr. Arote, the learned counsel for the applicant, banking upon the aforesaid observations of this Court, would urge that the veracity of the allegations can be judged from the fact that, on the one hand, there was delay in reporting the incident and, on the other hand, the report came to be lodged within days of the dissolution of the marriage between the first informant and the applicant. Since the victim was a 17 year old girl, the silence on the part of the victim for the said period of more than five months is totally inexplicable. In this view of the matter, the applicant deserves to be released on bail, in the event of arrest.

7. I have perused the material on record and carefully considered the submissions in support of the application and in opposition thereto.

8. It is indeed a fact that the FIR came to be lodged against the applicant after the marriage between the applicant and the first informant was dissolved on 14th November 2019. The submission on behalf of the applicant that the first informant had an axe to grind against the applicant, on account of the disruption of the marital bond, which must have been the culmination of the

marital discord, may carry some substance. However, the matter does not rest with the allegations of the first informant in the FIR. Had the allegations been restricted to those levelled in the FIR, different considerations would have come into play. The allegations in the FIR apart, there is a statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973 ('the Code'). In the said statement, the allegations against the applicant traverse much beyond the offence punishable under section 354C of the Penal Code. In the said statement, the victim has alleged that the applicant shot a video when the victim was intimate with her boyfriend. Thereafter, the applicant had forcible physical relations with the victim. Even after the divorce of the applicant and the first informant, on 17th November 2019, the applicant again attempted to molest the victim. Evidently, the allegations against the applicant are of aggravated sexual assault.

9. At this juncture, the submission on behalf of the applicant that these allegations are highly improbable and have been made only on account of the strained relations between the applicant, on the one part, and,, the first informant and the victim, on the other part, cannot be acceded to.

10. It is trite that the sole testimony of the victim, if found worthy of credence, is sufficient to sustain the charge of sexual assault and does not require corroboration. In the case at hand, in the backdrop of the nature of the allegations, to facilitate further investigation, the custodial interrogation of the applicant is warranted.

11. The observations made by this Court, while granting the ad-interim relief, were *prima-facie* in nature. The import of the statement of the victim recorded under section 164 of the Code was not fully adverted to by this Court. Therefore, I am not inclined to exercise the discretion in favour of the applicant.

12. Hence, the following order :

O R D E R

The application stands rejected.

Interim protection granted by this Court by the order dated 7th February 2020 stands vacated.

In view of the rejection of the anticipatory bail application, Interim Application No. 911 of 2020 also stands disposed of.

(N. J. JAMADAR, J.)