

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.409 OF 2021
WITH
INTERIM APPLICATION NO.743 OF 2021**

Adnan Shaukat Ali and Ors.

.. Applicants

Vs.

The State Of Maharashtra

.. Respondent

Mr.Abdul Hafees Coatwala i/b. M/s.Sumaria Legal Associates,
Advocate for Applicants.

Ms. Dhruti M. Kapadia, Advocate for the Applicant in IA.

Mrs. M. R. Tidke, A.P.P. for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th MARCH, 2021

PC.

1. The Applicants are apprehending arrest in connection with C.R. No. 568 of 2020 registered with Nagpada Police Station for the offences punishable under Sections 376(N), 506, 504, 323 and read with Section 34 of the Indian Penal Code (for short "IPC") and Section 4, 8, 10 of Protection of Children from Sexual Offences (POCSO) Act, 2012. The First Information Report (for short "FIR") was registered on 24.12.2020.

2. The case of the prosecution is that the complainant/victim has lost eyesight in her childhood. In 2013 one person came to her house. She was sexually assaulted by

him. She shouted. Her sister came. Name of accused was Adnan. The victim's sister questioned him. He ran away. The victim was frightened. She did not disclose about the sexual assault to her sister. She did not disclose the incident to her mother. After the period of about 10 days, the sister of the victim took her in confidence and inquired with her and at that time she told her that Adnan had molested her and subjected to sexual intercourse. The victim told her sister not to disclose the incident to her mother. The victim came to know that her brother Rahil had performed marriage with Sadaf. She is sister of Adnan. The victim's mother had gone to Australia. She returned to India after three months. The victim was sent to Islamic School, at Gujrat for learning Arabic language. She was brought to Mumbai. The victim, her brother and sister were taken to Australia. The victim was attending school to learn Arabic language. In 2018 all of them returned to Mumbai. The wife of Rahil was taunting her that she is blind. Victim was assaulted by her. Rahil's wife used to fight with her parents and brothers. She had lodged complaint against the victim's mother, brother and his friend. The victim's mother and brother were arrested by Police. In November 2020 the victim had visited Court along with her father. Wife of her brother Sadaf, her father, Adnan and Aafan had visited Court. Aafan abused her. Adnan reminded her about incident of 2013 and threatened her. Sadaf threatened her that her objectionable video would be made viral. Thereafter they

returned home. The victim told her mother about incident of 2013 and that Adnan, Aafan and Sadaf abused her in Court. She was scared of Adnan. The complaint was lodged on 24.12.2020. FIR was registered on 25.12.2020.

3. The applicants preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 04.02.2021.

4. Learned advocate for the applicants submitted that there is delay in lodging FIR. The complaint is false. There is no explanation for registering FIR belatedly. The victim is sister-in-law of applicant No.3. There is dispute between husband of applicant No.3 (brother of complainant) and applicant No.3. The applicant No.3 is house wife. She is mother of two children. The applicant No.3 is married to the brother of the complainant on 28.11.2013. It is further submitted that the applicant No.3 had lodged the FIR vide C.R. No.194 of 2019 against the family members of the complainant under Sections 354, 354(c), 498-A, 500, 504, 506 of IPC. On 23.11.2019, the husband of applicant No.3 was arrested and subsequently granted bail. On 29.10.2020 the husband of applicant No.3 and mother of victim barged into residential premises of applicant No.3. There was scuffle between them. The applicant No.3 was assaulted. FIR was lodged vide C.R. No.183 of 2020. The brother of complainant and her mother

were arrested on 13.11.2020 and they were granted bail. The father of the complainant threatened applicant No.3 with dire consequences. The applicant No.3 has initiated proceeding under Section 12 of Domestic Violence Act before the Court of learned Magistrate against her in-laws including the complainant. On 09.01.2021 the applicant No.3 has lodged complaint against mother of the complainant which is registered as NC complaint on 15.01.2021. False allegations are made against the applicants. It is alleged that the complainant was subjected to sexual assault in 2013 by applicant No.1. FIR is motivated. The FIR was registered on 25.12.2020. Custodial interrogation of the applicants is not necessary.

5. Learned APP submitted that the offence is of serious nature. The victim was subjected to sexual assault when she was minor. The victim is blind since childhood. She was subjected to sexual assault by applicant No.1. The version of the complainant/victim cannot be disbelieved. Specific role has been attributed to all the applicants. Medical evidence supports the prosecution case. It refers to old injuries.

6. Learned advocate for intervenor/complainant/victim submits that the victim is blind since her childhood. Delay has been explained by the victim. She was sexually assaulted by applicant No.1. Victim was minor at the time of incident. Overt act has been attributed to all the applicants. Victim's

statement has been recorded under Section 164 of Cr.P.C. There is no reason to doubt the version of complainant. Medical evidence refers to the injuries sustained by the victim. The applicants need to be interrogated in custody.

7. The applicant No.3 is wife of victim's brother. The marriage was performed on 28.11.2013. There are matrimonial disputes between applicant No.3 and family of complainant. Complaints are registered with the Police Station at the instance of applicant No.3. According to complainant/victim the incident of sexual assault had occurred in 2013. According to her she did not disclose the incident to anyone immediately after the occurrence of incident. After 10 days, she made disclosure about the incident of sexual assault to her sister Nidha. Neither the complainant nor sister of the complainant lodged complaint with the Police. The FIR was registered in 2020 which refers to incident of 2013. The applicant No.3 has also initiated proceeding under the Domestic Violence Act against her husband. She had also lodged FIR against her husband and in-laws. The inordinate delay in lodging FIR speaks volumes of doubt about its genuineness. The age of the victim at the time of lodging FIR at about 22 years. Her statement was recorded under Section 164 of Cr.P.C. on 08.01.2021. In the said statement she stated that she was sexually abused in 2013 by Adnan (applicant No.1). The victim shouted. Her sister saw the

applicant No.1 in the house. The victim did not disclose the incident to her sister immediately. After 10 days the victim told her sister that Adnan had poured oil on her private part. He has threatened her that he would break her hands and legs. Applicant No.3 had threatened that her video would be made viral. She disclosed the incident of sexual assault by Adnan on 20.12.2020. Father of Adnan had threatened them. She apprehends that the accused would assault them. The statement recorded under section 164 does not clearly indicate that the victim had told her sister that the applicant No.1 had committed penetrative sexual assault. Statement of victim's sister was recorded on 26.12.2020. She stated that Adnan had visited her house in December 2013. After about 10 days the victim disclosed to her that she was subjected to penetrative sexual assault. Thus, the sister of complainant was aware about the incident when the same was disclosed to her. The FIR is lodged after seven years from the date of alleged sexual assault. Victim was examined by medical officer on 28.12.2020.

8. Considering the factual aspects of the matter, custodial interrogation of the applicants is not necessary. The applicants can be granted anticipatory bail.

ORDER

- (i) Anticipatory Bail Application No. 409 of 2021, is allowed;

- (ii) Interim order dated 15th February, 2021, is confirmed;
- (iii) In the event of arrest of the applicants in connection with C.R. No.568 of 2020, registered with Nagpada Police Station, the applicants be released on bail on executing P.R. Bond in the sum of Rs. 20,000/-, each, with one or more sureties in the like amount;
- (iv) Applicants shall report the investigating officer on 15th, 16th and 17th March, 2021, between 11:00 a.m. to 01:00 p.m., and shall cooperate with the investigation;
- (v) Applicants shall not approach the complaint and shall not tamper with the evidence;
- (vi) Anticipatory Bail Application No.409 of 2021, stands disposed of accordingly;
- (vii) Interim Application No.743 of 2021, is disposed of.

(PRAKASH D. NAIK, J.)