

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 731 OF 2019**

Anmol Mahajan

... Applicant

V/s.

The State of Maharashtra

... Respondent

None for the Applicant

Smt. Rutuja Ambekar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 15th July 2021.****(Through Video Conferencing)****PC. :**

1. This is an application under Section 438 of the Criminal Procedure Code for pre-arrest bail in C.R. No. 42 of 2019, dated 30th January 2019, under Section 506 of Indian Penal Code and Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 registered with D. N. Nagar Police Station, Mumbai.

2. None for the Applicant. Heard Smt.Ambekar, learned A.P.P. for the Respondent-State. Perused record of investigation.

3. By an Order dated 26th March 2019 the Applicant has been granted interim relief by this Court.

4. The First Information Report is lodged by wife of Applicant. The first informant was a divorcee and she had a son (victim) from her first marriage. On the date of lodgment of crime i.e. 30th January 2019, the victim was aged about 5.5 years. The First Information Report itself states that, there was matrimonial discord between the Applicant and first informant since October 2017 and the Applicant was addicted to liquor.

It is the prosecution case that, from May 2018 to December 2018, the Applicant used to take the victim boy in his bedroom under the pretext of taking his tuition, and used to inappropriately touch his private part. The Applicant also threatened the victim that, if he tells the said fact to anybody, he will cut his private part which may lead to excessive bleeding. In this brief premise, the present crime is registered.

5. Perusal of record of investigation indicates that, the statement of victim boy was recorded by the learned Metropolitan Magistrate, 48th Court, Andheri, Mumbai on 4th May 2019. The learned Magistrate has recorded that, the victim/witness has not mentioned anything about the alleged incident. Though, the learned Magistrate asked from different angles about the alleged incident, the victim did not answer it satisfactorily.

6. It thus prima facie appears that, the statement of first informant is not corroborated by the victim boy. It further appears to this Court that,

after there was a matrimonial discord between the first informant and Applicant, the first informant putforth the victim to lodge the present crime against the Applicant. Police have applied provisions of POCSO Act in view of the age of victim boy. As noted earlier, prima facie the victim boy has not corroborated the version of the first informant and therefore it creates doubt in the mind of this Court about the alleged incidents as stated by the first informant.

7. In view thereof, the Applicant deserves to be protected by pre-arrest bail.

Interim relief granted by Order dated 26th March 2019 is confirmed.

8. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]