

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1383 OF 2021

Hemant Purushottam Nyaharkar .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Mr.Vaibhav D. Kadam for the Applicant.

Ms.Rutuja Ambekar, APP for the State.

Mr.Ashwin Pimpale h/f Ms.Awanti Inamdar for Respondent Nos.2 and 3.

...

CORAM: BHARATI DANGRE, J.
DATED : 01st SEPTEMBER, 2021

P.C:-

1. The Applicant is arraigned as an Accused in C.R.No.I-66 of 2021, registered with Adgaon Police Station, Nashik invoking Sections 363, 376 of the Indian Penal Code (for short, “IPC”) and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”). The Anticipatory Bail Application of the Applicant is rejected by the learned Sessions Judge, Nashik.

2. The subject C.R. came to be registered by the father of the victim girl alleging that his daughter, aged 16 years 9 months, went missing after she left the house by informing that she was going for job at one hospital at Nashik and she did not return home. On search, she was not traced and,

therefore, the complaint came to be registered under Section 363 of IPC.

The present Applicant is a friend of the complainant and when the search of the minor girl was carried out, it surfaced that she had voluntarily eloped with one Biplav Kumar, resident of Ranchi, Jharkhand. He was traced by tracking his mobile number by the Applicant with the help of police and he threatened Biplav that he will be sent to jail, if the custody of the victim girl is not handed over to her parents. The victim girl was also traced by taking help of mobile network location and was taken in custody. However Biplav Kumar managed to escape. It is surfaced that the victim girl was in love with Biplav Kumar, who is arraigned as Accused No.3 and she was angry with her family, relatives and the Applicant as he had assisted the family to bring her back. Since she refused to go home, she was sent in Remand Home at Nashik. Her statement came to be recorded and Section 376 of IPC and Sections 4 and 8 of POCSO Act were added to the crime.

3. The submission of the learned counsel for the Applicant is that the victim has falsely implicated the Applicant and one Pravin as she was angered by her separation with Biplav as she had voluntarily eloped with Biplav.

The statement of the victim girl, when perused, reflect that she had made allegations against the present Applicant which are stale and the father of the victim girl herself has tendered an affidavit to the effect that the girl was under a misconception that the Applicant is responsible for separating

her from her boyfriend. The victim girl also submitted her affidavit on 27/05/2021 stating that she is withdrawing the allegations against the present Applicant.

4. Co-accused Pravin Nagpure had filed an application, seeking his release on bail and taking into account the aforesaid circumstances and the statement of the victim girl, he was released on bail. The same reasoning can be made applicable to the present Applicant as, *prima facie*, it can be seen that the victim girl has involved the Applicant to revenge his act of asking her boyfriend, Biplav (Accused No.3) to return the victim girl to her parents and by leaving her, he fled away. Though the victim girl was subjected to sexual abuse, it was at the instance of Accused No.3 and the present Applicant is not responsible for the said act. In such circumstances, the Applicant deserves protection from arrest. Hence, the following order.

: ORDER :

- (a) The application is allowed.
- (b) In the event of arrest in C.R.No. I-66 of 2021 registered with Adgaon Police Station, Nashik Applicant-Hemant Purushottam Nyaharkar shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The Applicant shall report to the concerned police station on every Monday and Thursday between 10.00 a.m. and 2.00 p.m. for a period of 15 days and thereafter as and when called for.
- (d) The applicant shall not directly or indirectly make

any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)