

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1711 of 2021

Salauddin Babakhan Pathan	.. Applicant
Versus	
The State of Maharashtra & Anr	.. Respondents

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Mr. Satyavrat Joshi with Sunil S. Kamble for the applicant.
Ms.Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd AUGUST, 2021

P.C:-

1 Awaiting the presence of the complainant, the matter is listed today. On earlier date, the complainant was intimated by the Investigating Officer about the hearing of the application being scheduled on 29th July 2021, but there was no appearance. Today, when the matter is called out, learned APP Ms.Rutuja Ambekar makes a statement that the complainant was informed about the date of hearing through the Investigating Officer, through a *samaj patra*. However, neither the complainant is present nor she is represented by any counsel. This leave me no option than to proceed with the application.

2 The applicant is seeking pre-arrest bail in connection with C.R.No. 371 of 2021 registered with Hadapsar police station, Pune on 17th May 2021 on the complaint being lodged by the mother of the victim girl, aged 13 years. This resulted in registration of C.R by invoking Sections 354D, 324, 504, 506 read with Section 34 and Section 12 of the POCSO Act.

3 The complainant alleged that her daughter, aged 13 years narrated to her that accused no.2 met her in the parking area and offered a bracelet by way of gift to her, which she denied. Getting irked by her rejection, he threatened her that he will throw acid on her face and she had accepted the gift. She narrated the incident to her aunt who encouraged her to report the same to her mother, and was told by the victim that accused no.2 was stalking her and made gestures towards her when she was studying in the window. She also allege that he passed comments on her whenever he come across her in the colony.

4 On narrating the said incident, the informant, her husband and aunt of the victim and her brother-in-law approached the house of accused no.2 at about 8.30 p.m on 16th May 2021. When accused no.2 was questioned about the harassment, he started hurling abuses and called accused no.4 and it is alleged that the accused persons started assaulting

complainant and her family by sharp edge weapons. The applicant is arraigned as accused no.1 who is alleged to be present when the complainant and her family visited the house of Mushraff Shaikh and it is alleged that he had verbally abused and assaulted the complainant. The applicant is not responsible for the offence under the POCSO Act or the offence punishable under Section 354D of the IPC. He is at the most liable to be prosecuted for his act of holding the father of the victim and banging his head on the wall as per the prosecution.

5 In the wake of the allegations, the applicant is alleged to have committed an offence under Section 324 of the IPC. Pertinent to note that the offence punishable under Section 324 is a bailable offence in the wake of the Code of Criminal Procedure (Amendment Act 2005), under which the First Schedule of the Code came to be amended by Section 42 and by clause (f)(iii), the offence punishable under Section 324 was made 'non-bailable'. However, the said Act has not come into force since no notification is issued by the Central Government so far. *Prima facie*, by referring to the nature of accusation since the applicant cannot be said to be indicted for the offence punishable under the POCSO Act and Section 354D of the IPC, he is entitled to protection in the event of his arrest. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant – Salauddin Babakhan Pathan in connection with C.R.No.371/2021 registered with Hadapsar police station shall be released on bail on furnishing P.R. bond to the extent of Rs.20,000/- with one or two sureties of the like amount.
- (b) 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 should not tamper with evidence.
- (c) The Applicant shall not establish any contact with the complainant or the victim and not to tamper with the prosecution.

The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J