

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

ANTICIPATORY BAIL APPLICATION NO. 2110 OF 2021

Mohammed Akhtar Hussain Shaikh
@ Akhtar Chacha

... Applicant

Versus

1. The State of Maharashtra
2. Mushtaque Ali Shaikh

... Respondents

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Mr. Satyaram R. Gaud i/by Mr. Osama A. Menon, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 20th SEPTEMBER, 2021

PER COURT:

1. The applicant is apprehending arrest in C.R. No. 1139 of 2021 registered with Malvani Police Station on 6th August, 2021 for offence punishable under Sections 120-B, 506(2), r/w Section 34, 111, 114, 116, 3 & 4 of Indian Penal Code (for short “IPC”) and Section 22 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) and Section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2. The case of the prosecution is that the victim in this case are girls aged about 15 years & 7 months and 19 years. Both

are sisters. The elder sister was in need of job and she had appraised about it to accused Zaid. On 5th August, 2021 Zaid called the elder sister and told her to come with younger sister at Malwani. Both the victim reached the spot. They met Zaid, Rahil and two other persons namely Pawan Singh and Rizwan. Rahil told the victim that Mushtaque has taken possession of plot of Omji Kumawat and Akhtar Chacha (applicant). They were instructed to lodge false complaint against Mushtaque alleging that he had sexually assaulted the minor victim. They were offered the amount of Rs.50,000/- and advance amount of Rs.25,000/- was handed over to them. Since they refused the offer, they were threatened by the accused of dire consequences. While on the way to the Police Station both the victim decided not to accede to the demand of the accused instead they decided to lodge complaint. The First Information Report (for short 'FIR') was lodged by the Police Sub Inspector attached to Malwani Police Station. Apparently during the course of investigation, statement of the girls were recorded under Section 164 of Cr.P.C.

3. The applicant had preferred an application for anticipatory bail before the Court of Sessions which has been rejected.

4. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case on account of business rivalry. Mushtaque had purchased building material from the applicant and dues to the extent of Rs.6,00,000/- were paid by him. Since the applicant had demanded the said amount he has been falsely implicated at the instance of Mushtaque. Reliance is placed on the invoice about sale of building material. The applicant is 74 year old person. He was undergoing medical treatment. On the day of the alleged incident he was taking treatment. Reliance is place on the screen shots of the video.

5. Learned APP submitted that the applicant is involved in the offence. FIR mentions that the victim girls were induced to lodge false complaint against Mushtaque due to take over the possessions of plot of land which was in the possession of Mushtaque. Statements of victim girls were recorded under Section 164 of Cr.P.C. The said statements were produced for perusal of the Court. The applicant is involved in C.R. No.1157 of 2021 and the Additional Commissioner of Police, North Region, Mumbai has granted prior approval under Section 23(1)(a) of MCOC Act for invoking the provisions of the said Act.

6. In rejoinder learned counsel for the applicant

submitted that there is no cogent evidence to show his involvement in C.R. No.1157 of 2021. The applicant is old man undergoing treatment. He pointed out the medical case papers about treatment of the applicant.

7. The FIR proceeds on the basis that the victims were induced by offering amount of Rs.50,000/- to falsely implicate Mushtaque, who was purportedly in possession of plot in which the applicant and another person Omji Kumawat were having interest. The FIR was registered by the Police Sub Inspector. According to him he received information that the victims have visited Police Station for lodging complaint. He stated that the victims were called by Zaid and they were made the aforesaid offer. They were threatened. The motive of the crime was that the applicant and Mr. Kumawat to take over the possession of the plot from Mushtaque. The victim girls decided not to falsely implicate Mushtaque and narrated the incident. The offence under Section 22 of POCSO Act is punishable with imprisonment to one year. Section 506(2) pertains to non bailable offence. The threats were issued by the co-accused Rizwan, who has been arrested and he was produced for remanding on 6th August, 2021.

8. The statements of the victim girls were recorded under

Section 164 of Cr.P.C. on 6th August, 2021. The statement of one of the girl, who was major mentions that Rahil has told her that there is dispute between him and Mushtaque on account of landed property and hence false complaint is to be lodged against him. They were instructed to lodge the complaint of sexual assault. However, they informed to police that such incident had not occurred and they had decided to lodge complaint. The statement of minor victim also do not referred to name of the applicant or that she was instructed by Rahil to falsely implicate Mushtaque on behalf of the applicant. The motive attributed by the major girl is completely contradictory to FIR. The invocation of provisions of MCOC is independent of this case. The applicant is aged about 74 years. Considering the aforesaid factual aspects custodial interrogation of the applicant is not necessary.

9. Hence, I pass the following order:

ORDER

- (i) Anticipatory Bail Application No. 2110 of 2021 is allowed;
- (ii) In the event of arrest of the applicant in connection with C.R. No. 1139 of 2021 registered with Malvani Police Station, the applicant be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the investigating officer as and when called for.

(iv) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)