

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2499 OF 2019

Jimmy Manek Katrak ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Ms. Devyani Kulkarni, for the Applicant
Mr. S.R. Agarkar, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 30, 2021

P.C.:

. This is an application for pre arrest bail in connection with C.R.No. 550 of 2019 registered with Yerwada police station, Pune for the offences punishable under section 354-C and 509 of Indian Penal Code, 1860 and section 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The indictment against the applicant is that the applicant used to visit the house of the first informant as they were dealing in a tours and travels business in, partnership, since year 2007. The first informant left the said business in the year 2013. However, the applicant continued to visit the house of the first informant. In the year 2018 the applicant lodged a report with Child Welfare Committee (CWC) alleging that the adopted daughter of the first

informant was in need of care and protection. Pursuant to the order passed by CWC the first informant took the child for counseling at the office of CWC, Mankhurd. On 19th September, 2019 the counselor informed the first informant that the victim had narrated to her the incident which occurred in the year 2016 wherein the applicant had allegedly taken photographs of the victim in an inappropriate state and had shown those photographs to the friends of the victim on 22nd December, 2016, as those children had come to celebrate her birthday. The applicant had allegedly also attempted to poison the mind of the child by repeatedly telling that her mother (first informant) was not a good person.

3. By an order dated 18th November, 2019, this Court had granted ad-interim protection recording inter alia that the incident had occurred prior to three years of the lodging of the report. No grievance was made when the child was interacted on 15th January, 2019 and 11th March, 2019 at CWC.

4. Two affidavits in reply are filed by the State. In the affidavit filed by Ms. Swati Thakur, PSI, the following averments are made:

5(a). I say that after recording the complaint of the complainant I have recorded the complaint of the victim and I have also collected counseling report of the victim which was recorded by counselor Jessica Azaved and I have also seized the mobile of the applicant/ accused in which he has

snapped the photographs of the victim and on 28.11.2019 I have sent the seized mobile for forensic examination and till today the said report is awaited.

5. In the affidavit filed by Ms. Shubhangi Magdum, PSI, it is averred as under:

4] I say that during the course of investigation I have carried out spot panchanama and recorded the statement of witness. After going to the statement of complainant and victim it was revealed that complainant was snapped the photographs of victim in his mobile.

5] I say that during the course of investigation I have seized the mobile of the applicant on 21.11.2019 in presence of panchas and sent the said seized mobile for forensic examination on 28.11.2019 and till today the report is awaited.

6. In the backdrop of the aforesaid assertions forensic examination of the mobile phone handset, with which the photographs of the child were allegedly snapped, would shed light on the allegations. Thus time was granted to the respondents to place the report on record. Finally, by an order dated 4th September, 2021 time was granted to the respondent, by way of indulgence, to place on record the report of forensic examination. The learned APP submits that the report has yet not been received.

7. The learned counsel for the applicant submits that the applicant and first informant were in a live-in relationship. The child was adopted while the applicant and first informant shared

the said relationship. In the school record of the child, the name of the applicant has been shown as the father of the child. It was the applicant who had filed an application before CWC asserting that the said child was in need of care and protection. Attention of the Court was also invited to the report of the counselor dated 15th January, 2019 pursuant to the order passed by CWC, dated 18th December, 2018.

8. The aforesaid material indicates that the applicant was shown as the father of the child in the school leaving certificates (page 72 and 73). The claim of the first informant that the relationship did not transgress business partnership does not appear prima facie sustainable. From the own showing of the first informant, the applicant has initiated proceeding before CWC claiming that the first informant neglected the child. The material on record indicates that the applicant and the first informant have turned astray. In the backdrop of the aforesaid nature of the relationship between the applicant and the first informant, the aspect of delay assumes significance. The fact that the child allegedly narrated the incident to the counselor and not to the first informant also assumes significance.

9. In the totality of the circumstances, the custodial interrogation of the applicant does not seem warranted as during the course of the investigation the mobile phone handset has already been seized and sent for forensic analysis.

10. In the aforesaid view of the matter, I am persuaded to confirm the order of interim protection on the terms and conditions incorporated in the order dated 18th November, 2019.

11. In addition, the applicant shall not tamper with the prosecution evidence or threaten or induce the prosecution witnesses.

12. In the event charge sheet is filed, the applicant shall regularly attend the proceeding before the jurisdictional Court.

13. The application accordingly stands disposed of.

(N. J. JAMADAR, J.)