

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2548 OF 2019**

Rohan Parshuram Vaiti .. Applicant

VS.

The State of Maharashtra and Anr. .. Respondents

Mr. Samyak Gimekar for the Applicant.

Mr. Amol Mhatre i/b. Mr. Sameer Mhatre for Respondent No.2.

Smt. M.R. Tidke, APP for the State.

Mr. Nagesh Shiraskar, PSI, Rabale Police Station, Navi Mumbai.

CORAM : M.S.KARNIK, J.

DATE : OCTOBER 25, 2021

P.C.

Heard learned counsel for the parties.

2. The Application is filed for pre-arrest bail by the Applicant was then working as a Police Constable with the Rabale Police Station. The victim lodged the FIR under Sections 354-A, 354-D, 323, 504, 506 of Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) being C.R. No.368 of 2019. It is the case of the prosecution that the complaint came to be lodged on 25.07.2019 against the Applicant. The victim's husband suffered a paralytic stroke. The victim's husband was running a hotel where the Applicant used to come to take his meals. The husband of the victim and the Applicant are acquainted with each other. It is alleged that the

Applicant had helped her husband in one matter. It is then contended that the Applicant made sexual advances towards the victim and demanded that she leave her husband and the Applicant promised to look after her. The victim stopped visiting the hotel because of the harassment. The Applicant was annoyed because complainant-victim refused his proposal. The Applicant even tried to convince the complainant through one Ms. Vandana Tambatkar to accept his proposal. It is then alleged that he used to come to the house of the complainant and demand sexual favours. The husband was also beaten up by the Applicant. The complaint was made to the Commissioner of Police on 12.03.2018. The Applicant pressurised the victim to withdraw the complaint. It is alleged that on one occasion the Applicant tried to molest her. The Applicant was annoyed because of the attitude of the victim in refusing his proposal and therefore, the Applicant ensured that a false criminal case is registered against the victim's husband. The Applicant would often go to the house of the victim and ask indecent questions to the victim as well as a daughter of the victim who was a minor. These allegations of sexual assault on the daughter of the victim by the Applicant. Another complaint was made by the victim, but this time she was forced to withdraw the complaint to secure the release of her husband from jail.

3. It is pointed out by learned APP that the chargesheet has been filed under Sections 354-A, 354-D, 323, 504, 506 of Indian Penal Code and Section 8 of the POCSO Act. Learned counsel for

the complainant submitted that the Applicant being police officer/public servant, the police ought to have registered the offence under Section 9 of the POCSO Act being aggravated sexual assault. I do not wish to comment on this aspect at this juncture as these are the matters for the appropriate Court to consider.

4. Suffice it to observe that the allegations made in the FIR of sexual harassment and assault against the victim and her daughter who is a minor, are of serious nature. In my opinion, this is not a fit case to accede to the request of the Applicant for grant of pre-arrest bail.

5. Learned counsel for the Applicant submitted that as the chargesheet has filed, the custodial interrogation of the Applicant is not necessary. Further, he prayed that as the Applicant has been granted interim protection since 21.11.2019, with a view to enable the Applicant to apply for regular bail, the interim protection be continued for a reasonable period. Learned counsel relied on the decision of the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and anr.**¹ to contend that as the Applicant was not arrested during investigation and co-operated through out the investigation including appearing before the Investigating Officer whenever called, the protection granted earlier be extended. He also relied upon on the decision of the Hon'ble Supreme Court in the case of **Sushila Aggarwal and**

1 Petition(s) for Special Leave to Appeal (Crl.) No(s).5191 of 2021.

others Vs. State (NCT of Delhi) and another² to contend that the conditions can be imposed by the concerned court while granting prearrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the anticipatory bail application is moved, namely, whether the same is at the stage before the FIR is filed or at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge sheet is filed. I am afraid that the decision in **Sushila Aggarwal** (*supra*) will not be applicable in the facts of the present case as the Hon'ble Apex Court has taken a view that the normal rule should be not to limit the order in relation to a period of time. In the present case, on merits I am not inclined to grant the prayer for pre-arrest bail. Further, as having regard to the facts of the present case, I am not inclined to extend the interim protection granted, the request made stands rejected.

6. If appropriate application for bail is made by the Applicant before the competent Criminal Court, it is for the Applicant to bring the decision in **Satender Kumar Antil** (*supra*) to the notice of the concerned Court.

7. Needless to mention that the observations in this order are made for the limited purpose of deciding the Anticipatory Bail Application and the Bail Application if preferred be decided on its own merits and in accordance with law.

2 Special Leave Petition (Criminal) Nos.7281-7282 of 2017.

8. Learned counsel for the Applicant then submitted that the interim protection granted may be continued for a reasonable period to enable him to take recourse of appropriate proceedings challenging the order passed by this Court. However, in the present facts, I am not inclined to continue the interim protection. The Anticipatory Bail Application is rejected.

(M.S.KARNIK, J.)

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signed by
PRADNYA
MAKARAND
BHOGALE
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