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

ANTICIPATORY BAIL APPLICATION NO. 2641 OF 2019

Bhavesh Rajesh Bhaliya ..Applicant
vs.
The State of Maharashtra ..Respondent

Mr. Datta Mane, for Applicant.
Mr.N.B. Patil, APP for State – Respondent.

CORAM : M. S. KARNIK, J.

DATE: OCTOBER 01ST, 2021

P.C. :

. Heard learned Counsel for the applicant. This is an application for pre-arrest bail for the offences punishable under sections 354(A), (C) and 509 of the Indian Penal Code and sections 10 & 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short). The crime is registered by Santracruz Police Station being FIR No. 389 OF 2019. The father of the victim registered the FIR on 30/09/2019. Briefly stated, it is his allegation that he married in the year 2007. The victim is his daughter aged 11 years. Due to family dispute, the wife started residing separately with her children. It is alleged that the wife has an affair with the

applicant. It is alleged that the applicant molested the victim. First incident of molestation is alleged to have taken place some time in June 2019. Thereafter it is alleged that 5 to 6 days prior to lodging of the FIR, 2nd incident of molestation happened. The 3rd incident is of 29/09/2019. The mother, despite the victim's informing her of the happenings, did not take any action and in fact asked her not to mention about the incidents to anyone.

2. The statement of the victim is recorded under section 164 of Code of Criminal Procedure wherein the victim has narrated the incidents of molestation.

3. Learned Counsel for the applicant submitted that he is innocent and that he is residing in the same locality as the victim's mother. He only tried to help the victim's mother as she was being harassed by the complainant. Learned Counsel relies upon the complaint filed by the victim's mother against the complainant and the affidavit sworn by her on 14/10/2019. In paragraph 8 of the affidavit dated 14/10/2019, she states as under :

"8. I state and submit that, again I repeat that the said FIR bearing No. 359/019 is not true, but it is registered by my husband with criminal intention and intimidation to teach a

lesson to the said Mr.Bhavesb Bhaliya. He is a innocent man and has been trying to help me out to get over in the said domestic dispute. So also he is helping me in my work, as I am alone and struggling over my domestic dispute, so also growing my children up."

4. Learned Counsel further submitted that he co-operated with the investigation and he has reported to the police station on as many as 94 occasions pursuant to the interim protection granted to him on 03/12/2019 by this Court. He submits that the applicant has co-operated with the investigation and his custodial interrogation is therefore not necessary.

5. Learned APP opposed the application.

6. I have carefully gone through the FIR. I have also perused the affidavit filed by the victim's mother supporting the applicant. The victim's mother also tried to justify the conduct of the applicant. Even from the affidavit, it is seen that the presence of the applicant in the house at the time of the incidents is not disputed by the victim's mother.

7. The victim's statement is recorded under Section 164 of the CrPC wherein she has narrated the details about the molestation

by the applicant. The victim is below 12 years of age and therefore, it is not possible to accept the contention of the learned Counsel for the applicant that sections 10 and 12 of the POCSO Act are not attracted. Considering the nature of the allegations, this is not a fit case for grant a pre-arrest bail to the applicant.

8. Application is rejected.

(M.S. KARNIK, J.)