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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 ANTICIPATORY BAIL APPLICATION NO.614 OF 2022

**SUNDRA W/O. DILIP PATOLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. N.R. Thorat, Advocate for applicant;
Mr. A.A. Jagatkar, A.P.P. for respondent no.1;
Mr. D.R. Gavhad, Advocate for respondent no.2

**WITH
ABA/11/2022**

**ADESH S/O TANAJI RANDIVE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Rahul R. Karpe, Advocate for applicant;
Mr. A.A. Jagatkar, A.P.P. for respondent no.1;
Mr. D.R. Gavhad, Advocate for respondent no.2

CORAM : S. G. MEHARE, J.

DATE : 20th July, 2022

PC.

1. The applicant Adesh is brother-in-law of the victim. The applicant Sundara is the step mother of the victim. Both applicants are seeking anticipatory bail under Section 438 of the Code of Criminal Procedure.

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2. A report was lodged on 15.9.2020. The incident of consuming insecticide happened on 21.8.2020. It has been alleged by the victim who is 16 years old that after the death of her father the applicant Sundara was confining her in house and forcing her to do anything. The applicant Adesh was hugging her. The applicant Sundara, on receiving the money was allowing the other persons to do forceful sex with her. Then she went to the house of her step sister Vanita at other place. However, there also she troubled her same way. After two years she withdrew her admission and again admitted to school at Kuldharan and started residing at her native place. Thereafter all the accused started coming to her house. Therefore, she went to reside at the house of her sister at another village. All the accused were also going there and torturing her mentally. Due to the continuous torture, on 21.8.2020 she consumed insecticide and fell unconscious. Her sister took her to the hospital. She was hospitalized. On the basis of these allegations, first information report has been registered.

3. Besides the above, the prosecution has produced the statement of the victim dated 1.9.2020. She has stated before the police that all the accused were forcing her to keep the relations with the persons as per their say. Applicant Adesh and Ranjeet went to the house where she was residing and asked her to come with them to their place.

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However, she had apprehension that they may sell her, hence, she did not go with them. Since she denied to go with them, they became annoyed. They were forcing her to lodge report against her sister and her family members. Hence, she has consumed insecticide.

4. Police have also recorded statement of the sister of the victim with whom she was residing when the victim was under treatment. Her sister's statement dated 21.8.2020 reveal that she has stated before the police that the present applicant Adesh and Tanaji had been to her house to take the victim back. However, she was not willing to go with them. Hence, on such trifle dispute in the heat of anger, the victim has consumed insecticide. Unfortunately, no offence was registered on the statement of the victim dated 1.9.2020 nor the statement of her sister dated 21.8.2020. In nut-shell, the allegations are that all the accused were forcing the victim to do the prostitution and they were making money.

5. The learned counsel for the applicants have vehemently argued that a false report has been lodged to counter the report lodged by another girl against the husband of the sister of the victim for the offence punishable under Sections 376 and 354 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act. The said report was lodged on 24.2.2020

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about the incident dated 7.10.2019. They have referred to the medical report of the victim and submit that there were no injuries on the private organ of the victim and even necessary samples were not collected. There were no injuries on her person.

6. The learned counsel for the applicants have referred to a letter dated 15.9.2020 addressed by police of Karjat to the Chairman, Child Welfare Committee, Ahmednagar wherein it has been mentioned that the sister of the victim stated that the offence has been registered against her husband and he is in jail. Therefore, to release him, the sister of the victim was using her. Police has suspicion that the sister of the victim was using the victim. It was requested by the police that she may be given in the proper custody. The victim gave a statement before the Child Welfare Committee that she wanted to live with her sister. She is taking her care. It has been argued by the learned counsel for the applicants that the prosecution story is not consistent. The sister of the victim has deposed a different story. The victim has deposed the contrary statement. Therefore, the applicants may be released on anticipatory bail.

7. Per contra, the learned A.P.P. and the learned counsel appearing for the victim have vehemently argued that a serious offence has been committed by the accused. They were forcing her to do prostitution.

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Since many years, the victim was tortured. The statement of the victim is material. She has given the complete statement in detail on 1.9.2020. She has expressed an apprehension that she would be sold and she was forced to lodge report against her sister and her family members. Therefore, the application may be rejected.

8. The *inter se* relation between the applicants and the victim is not denied. The applicant Adesh is the maternal uncle of the girl who has lodged the report against the husband of the sister of the victim. The said crime was registered on 24.2.2020. In the said report she has stated the first incident of committing forceful sexual intercourse by the brother-in-law of the victim happened on 11.10.2019 in her house. Second incident happened on 13.10.2019. It has been alleged that he did sex with her till 25.10.2019. She disclosed the incident first time on 23.2.2020 to her paternal aunt. Thereafter, a report was lodged. That report is apparently delayed. After this report, the present report is lodged on 15.9.2020, i.e. about seven years after the first report lodged against the brother-in-law of the victim.

9. The sister of the victim has stated before the police on 21.8.2020 when the victim was conscious. In the said statement she has stated that the applicants Adesh and Tanaji were asking her to

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come with them. However, she was not willing to go. Hence, on this trifle reason she has consumed poison. As against this, the victim has given a detailed statement on 1.9.2020. Unfortunately, the police did not register the crime on the said statement.

10. It has been pointed out by the learned counsel for applicant Sundara that if the age of the victim at the time of committing atrocities and forcing her to have sex with other persons is considered, she was not more than eight years. The statement of the victim is vague and not supported with the medical report. The statement of her sister is natural. No offence as alleged is committed by either of the applicants.

11. Considering the facts of the case and reports against each other as per their convenience after the incident, it seems that the relations between the victim and the accused are not cordial. They are lodging the serious reports against one another. Therefore, it raises the suspicion. There are contradictory statements available on record. Except asking the victim to come with the applicants, there is no consistency in the statement of the victim and her sister. In the circumstances, the application deserves to be allowed. Hence, the following order:-

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- i) The applications are allowed.
- ii) The interim protection granted to the applicant Adesh Tanaji Randive, by order dated 12.1.2022 is confirmed on the same condition of bail bonds with a condition to attend the police station as and when called on written notice.
- iii) In the event of arrest, applicant Sundra w/o Dilip Patole, be released on bail on executing P.B. and S.B. of Rs.20,000/- with one solvent surety of the like amount, in C.R. No.0838 of 2020, registered with Karjat police station, for the offence punishable under Sections 366A, 511, 341, 504, 506 read with Section 34 of the Indian Penal Code and Sections 8 and 17 of the Protection of Children from Sexual Offences Act.
- iv) Both the applicants should not contact the victim.

(S. G. MEHARE, J.)

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