

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.101 OF 2022

MUNJA @ AKASH S/O DHURAJI MAKASARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicants : Mr. S. S. Rathi
APP for Respondent-State : Ms. Vaishali Patil Jadhav

.....

WITH

ANTICIPATORY BAIL APPLICATION NO.104 OF 2022

SITARAM PRABHU RATHOD
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicants : Mr. M. V. Thorat
APP for Respondent-State : Ms. Vaishali Patil Jadhav

.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-02-2022.

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.5 of 2022, registered with Manwath Police Station, District Parbhani, for the offences punishable under Section 363, 366, 376 (2) (n) read with 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Rathi, Mr. M. V. Thorat for applicants and learned APP Ms. Vaishal Patil Jadhav for respondent-State.

3. It has been vehemently submitted on behalf of the applicants in ABA No.101 of 2022 that perusal of the FIR would show that the main allegations are against accused No.1 Tejas Digambar Narwade, and the present applicants being the friends of Tejas, they have been implicated. Even if the contents of the FIR are taken as it is, the role of applicant No.2 would be to the place from the house of the informant to Kolha Pati. She states that after all of them reached at Selu on motorcycle, he told Tejas that he will not come along with them further, and therefore, Tejas asked him to go back. So he went towards Parbhani. She further states that on the motorcycle driven by Tejas, informant and applicant No.1 proceeded further to Jalna. She was taken to the house of sister of Tejas around 10.00 p.m., and thereafter, applicant No.1 went to Parbhani. Except this, there is no other act attributed to the applicants. The informant is appears to be the major girl as she has given her age as 18 years, and therefore, the offence under Section 363 of the IPC will not be attracted. As regards offence under Section 366 of IPC is

concerned, i.e. abduction, taking into consideration the conduct of the informant who is major, it cannot be stated that it was for the purpose of procuring her for any illegal act. Therefore, when the physical custody of the applicants is not required, they deserve to be released on bail.

4. The learned Advocate appearing for the applicant in ABA No.104 of 2022 submitted that the applicant's name is not appearing in the FIR, but as per the prosecution, he has been referred as the person from Banjara community. It is such a vague term as if the applicant is the only person from that community in the area. The applicant is serving as a Lineman with MSEDCL and he was on duty at different place on the day of incidence. It has been contended in the FIR that after informant and Tejas had spent night on 22-12-2021 in the house of one Suprabha Wakale, they left on 23-12-2021 in the car which was brought by Tejas and his maternal uncle. She was taken to Jalna and uncle left them on road and the car went towards Parbhani. It is then stated that Tejas had called motorcycle of the person from Banajra Community and he had then left them to the house of sister of Tejas. The further role attributed is that on 30-12-2021 again, the applicant had taken Tejas as well as

informant on motorcycle from Jalna to Tadborgaon. The physical custody of the applicant, under such allegations, is not required. He is ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly opposed the application and submitted that all the three applicants have taken active part in abducting the girl and leaving her from one place to another. Though offence under Section 376 of the IPC might be against Tejas, but as regards Section 366 of IPC is concerned, it has been made out against the present applicants, they do not deserve any sympathy.

6. At the outset, as regards the applicant in ABA No.104 of 2022 is concerned, though he has come with a plea of alibi and tried to produce on record certain documents; that plea is required to be proved by him at the time of trial, hence, those documents cannot be considered.

7. Perusal of the FIR would show that the informant has given limited role to the applicants. This Court was cautious about age of the girl, and therefore, had asked the learned APP to get information

about it. But then it appears that her year of birth is 2003, that means, she was major when the incident took place, hence, section 363 of IPC cannot get attracted. As aforesaid, the offence under Section 376 (2) (n) of IPC is alleged against accused No.1 Tejas.

8. Taking into consideration the role attributed to the applicants, it can be seen that the applicants in ABA No.101 of 2022 had the knowledge that Tejas would take informant along with him. Informant contends that those persons after they had come on motorcycle to the house of her maternal aunt, she told that the health of her grandfather is not well, and therefore, her father has asked them to fetch informant and bring her to house. She appears to be the resident of village Asola Tq. Parbhani Dist. Parbhani and had gone to meet her aunt at Ambegaon. She would have been aware about the route from Asola to Ambegaon and vice versa. When she was taken to Selu, and if she would have realized that it is not on her route to her house, definitely she would have raised objections/ try to get out of the clutches. Her FIR does not say that there was any such attempt by her on her journey. Applicant No.2 went back from Selu to Parbhani and applicant No.1 went back to Parbhani from Jalna. She states that after applicant No.1 left and

she could find that sister of Tejas was not at home, yet they stayed in her room for that night on 21-12-2021. But then she does not say that Tejas had sexual intercourse at that place against her wish. Thereafter, on 22-12-2021 she introduces the person from Banjara community i.e. applicant Sitaram Rathod who had then left them to Selu. She does not say that even she had tried to speak to applicant Sitaram Rathod and state them that she has been brought against her wish. Even on that day, she thereafter, appears to be taken to the paternal aunt of Tejas, who had then taken informant to one Anganwadi Sevika Suprabha Wakale who was known to her. She does not say that she had tried to get help from said Suprabha Wakale also. Then again on 23-12-2021 she introduces Sitaram Rathod who is stated to have left them to the room of sister of Tejas at Jalna and again on 30-12-2021 he had left them to Tadborgaon from Jalna. Thus, it can be seen that for about ten days she was with Tejas and yet the FIR does not try to explain as to what efforts she had made to get herself rescued. This shows that she was a consenting party, and taking into consideration all these aspects, the physical custody of the applicants is not required for the purpose of investigation. They deserve to be released on anticipatory bail. Hence, following order.

ORDER

- 1) Applications are hereby allowed.
- 2) In the event of arrest of the applicants Munja @ Akash s/o Dhuraji Makasare, Balaji s/o Digambar Parde and Sitaram s/o Prabhu Rathod, in connection with Crime No.5 of 2022, registered with Manwath Police Station, District Parbhani, for the offence punishable under Section 363, 366, 376 (2)(n) read with 34 of IPC, they be released on P.R. of Rs.50,000/- each (fifty thousand) with one or two sureties of like amount.
- 3) The applicants shall not tamper with the evidence of the prosecution.
- 4) They should remain present before the Investigating Officer on every Wednesday between 11.00 a.m. to 02.00 p.m. till further orders.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-