

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.241 OF 2022

SUPRABHA W/O MANIKRAO WAKLE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. S. Rathi
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 17-03-2022

ORDER :

1. The applicant is apprehending her 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 for applicant and learned APP Mr. A. M. Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the main allegations are against accused No.1 Tejas Digambar Narwade. Even if the contents of the FIR are taken as it is, one Balaji accompanied them to the place from

the house of the informant to Kolha Pati. Informant states that after all of them reached at Selu on motorcycle, Balaji 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 Munja @ Akash proceeded further to Jalna. She was taken to the house of sister of Tejas around 10.00 p.m., and thereafter, Munja @ Akash went to Parbhani. Thereafter maternal aunt of Tejas namely Devshala took Tejas and informant to the house of present applicant Suprabha Wakale. Tejas and informant stayed there for a night. Except this, there is no other act attributed to the present applicant. 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 applicant is not required, she deserve to be released on bail.

4. Learned Advocate for the applicant submits that the applicant

had no idea that the girl was abducted. On the say of paternal aunt of the Tejas, she had allowed accused No.1 Tejas and the informant to stay with her. In the FIR itself it is stated that there was no intercourse between Tejas and the informant in the house of the applicant. She had allowed them to stay along with her on the request of paternal aunt of Tejas, therefore, there is no question of any common intention on the part of the present applicant.

5. Per contra, the learned APP strongly opposed the application and submitted that the applicant has taken active part in abducting the girl. 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 applicant, she do not deserve any sympathy.

6. Perusal of the FIR would show that the informant has given limited role to the applicant. 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.

7. Taking into consideration the role attributed to the applicant, on 23-12-2021 informant appears to be taken to the paternal aunt of Tejas, who had then taken informant and Tejas to the house of present applicant who was known to her. Informant does not say that she had tried to get help from present applicant also for her rescue. The present applicant had allowed Tejas and informant to stay at her house on the request of paternal aunt of Tejas. Informant also says that she was knowing the applicant, and therefore, applicant was not stranger to the informant, yet informant did not disclose to her that Tejas had abducted her by giving false information that her grandfather is ill. It appears prima facie that informant who is a major girl had left the house on her own and joined company of Tejas. 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 applicant is not required for the purpose of investigation. She deserve to be released on anticipatory bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The interim protection granted by this Court on 04-03-2022 to the present applicant Suprabha w/o Manikrao Wakle is hereby confirmed. In other words, in the event of arrest of the applicant, 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, she be released on P.R. of Rs.30,000/- (thirty thousand) with two sureties of Rs.15,000/- each (fifteen thousand)
- 3) The applicant shall not tamper with the evidence of the prosecution.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.