

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 ANTICIPATORY BAIL APPLICATION NO.272 OF 2022

NILESH ASHOK SHELAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Kshirsagar Hemraj P.
APP for Respondent No.1-State : Ms. Vaishali Patil Jahdav
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-03-2022

PER COURT :

1. Heard learned Advocate Mr. H. P. Kshirsagar for applicant.
2. Learned APP strongly opposes for grant of any interim relief taking into consideration the fact that this is the second offence of similar nature by the applicant. Earlier on the basis of FIR dated 20-07-2019, offence vide Crime No.298 of 2019 was registered with Gangapur Police Station, District Aurangabad, for the offence punishable under Section 354A, 354D, 506 of IPC and Section 8 and 12 of POCSO Act, for which the charge-sheet is already filed before learned Special Judge under POCSO Act at Vaijapur. It is further submitted that now again the offence has been committed on 14-12-2021, and therefore, discretion cannot be used in favour of such

accused.

3. Learned Advocate appearing for the applicant has pointed out Crime No.481 of 2021, registered with Aurangabad Rural Police Station on 15-12-2021 by the applicant under Section 324, 365, 504, 506 r.w.34 of IPC and it was against the father of the informant, mother of the minor girl and one another person, and after that crime No.482 of 2021 has been lodged by the informant with Aurangabad Rural Police Station for which the applicant is apprehending his arrest, therefore, it appears that on the say of the parents, the informant is acting so. Informant herself had called the applicant by giving a phone call on his mobile number. The applicant was severely beaten and the discharge summary given by Government Medical College, Aurangabad, would show that he was admitted there from 19-12-2021 to 29-12-2021. He has then taken treatment at Padmavati Multispeciality Hospital also and it is the effect of the beating given to him that he has been put on dialysis. Thereafter, on 03-01-2022 the applicant and his mother had given representation to Superintendent of Police, Rural Aurangabad, asking thorough inquiry in the matter and certain annexures were appended to the same. Therefore, taking into consideration these

aspects, the applicant be granted interim protection.

4. At the outset, it is to be noted that the sonography report given by Sushreya Sonography CT Scan and Digital X-Ray Centre, on 17-12-2021 gives impression that, "Liver Contusion with Mild Haemoperitonum." As per his own FIR dated 15-12-2021, the incident had taken place on 14-12-2021 but the discharge card which he has placed on record is for the period between 19-12-2021 to 29-12-2021. There is no documentary evidence in the form that he was admitted to that hospital from 15-12-2021 to 19-12-2021. No doubt, the investigation appears to have been done by Padmavati Multispeciality Hospital and the Sonography and CT Scan Center on 17-12-2021 and 19-12-2021 respectively. Therefore, at the time of discharge from Government Medical College, Aurangabad on 29-12-2021, there is no such remark about putting him on dialysis. What has been stated is that he should come up for follow up after seven days.

5. What is required to be seen is that the applicant is already facing the criminal trial before the learned Special Judge under POCSO Act on the basis of the FIR lodged by the present informant itself on 20-07-2019. The question then arises as to whether the

informant could have called him on that day by giving a phone call. No documentary evidence has been produced by the applicant to show that he had received such phone from a particular number which has been reflected in his FIR. Merely because his complaint/FIR is prior in time, that does not mean that whatever he has stated in his FIR, is gospel truth. The love letter which was appended to the representation by the applicant and his mother appear to be prior to the earlier FIR and even in the representation it has been stated that that letter was given on 15-07-2019 by the girl as one sided love by her to him. If the applicant had no feelings for the girl, then it is hard to believe that he would have gone to the place merely on the phone call of the girl. Therefore, taking into consideration all these aspects, when the second offence has been reported against the applicant, he does not deserve any kind of sympathy. Extraordinary power of this Court cannot be utilized in his favour. The application deserves to be rejected at the threshold, and accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.