

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

**930 ANTICIPATORY BAIL APPLICATION NO.557 OF 2022
WITH ABA/559/2022 WITH ABA/558/2022
KAUTIK SAHEBRAO CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.R.P. Gaikwad, Advocate for applicant in ABA No.557 of 2022.

Mr.A.D. Ostwal, Advocate for applicants in ABA No.558 and 559 of 2022.

Mr.V.S. Badakh, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 06.05.2022**

PC :-

01. All the three applicants are apprehending their arrest in connection with Crime No. 114 of 2022, registered with Sakri Police Station, Dist. Dhule for the offences punishable under sections 354-A of the Indian Penal Code and sections 8,12,17 and 21(2) of the Protection of Children from Sexual Offences Act, 2012.

02. Heard Mr.R.P. Gaikwad and Mr.A.D. Ostwal, learned Advocates for the respective applicants and Mr.V.S. Badakh, learned APP for the respondent/State.

03. Learned APP has strongly opposed the applications stating that as

against applicant in ABA No.557 of 2022 there are specific allegations and there is evidence in the form of CCTV footage of the school. Other two applicants though were knowing it fully well that such thing has happened, had not reported said fact, which itself is an offence under the POCSO Act. Therefore, legally as well as morally the applicants do not deserve any sympathy.

04. Perusal of the FIR lodged by one Vijay Ahire would show that he was serving as a Clerk with Gangamata Kanya Vidhyalaya, Mhasdi. Applicant Varsha is Headmistress and applicant Narendra, who is her husband, is Assistant Teacher. Applicant Kautik is also Assistant Teacher with the same school. The informant has lodged the report on 31.03.2022 in respect of alleged incident that had taken place between 10.11.2019 to 24.01.2020. Therefore, there is apparent delay in lodging the FIR. The dissection of the FIR would show that offence that is lodged under Section 354-A of the IPC and Sections 8, 12 of the POCSO Act is against applicant Kautik and informant is alleging that other two applicants have committed offence under Section 17 of POCSO Act, which prescribes punishment for abettment of an offence punishable under Section 21 (2) of the POCSO Act. Perusal of the FIR would

show that the inferences drawn by the informant that applicants Varsha and Narendra had abetted commission of crime by applicant Kautik and this inference is stated to have been drawn on the basis of CCTV footage which was supplied by the informant to applicant Varsha in a Pen Drive, but whatever he had seen in the CCTV footage cannot be said to attract abettment by two applicants. Therefore, at the most, offence under Section 21 (2) of the POCSO Act will get attracted against applicants Varsha and Narendra. Though applicant Narendra claims that he is not a person in authority, that Section will not be applicable to him, but learned Advocate representing him has not considered Section 21 (1) of the POCSO Act, which makes person guilty of committing offence, who fails to report commission of offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offence. Applicant Narendra may not be responsible to record the offence but definitely for report he may be. However, as regards, applicant Varsha and Narendra are concerned the offence that can be attracted under Section 21 (2) and Section 21 (1) of the POCSO Act respectively are punishable with imprisonment of either description which may extend to one year and six months respectively with fine, or with both and for that purpose custodial interrogation of those applicants is not necessary.

05. As regards applicant Kautik is concerned, he is taking defence that the informant is a person against whom disciplinary actions have been taken and neither CCTV footage and Pen Drive bears the certificate under Section 65-B of the Indian Evidence Act. Therefore, it may not be considered as evidence. The informant has intentionally lodged report just to take revenge against employees and officials of the School. However, it is to be noted that the investigation is going on, at this stage the point raised as regards certificate under Section 65-B of the Indian Evidence Act, cannot be appreciated, in a way that if the controlling authority of the CCTV footage is an accused, then whether such certificate can be called upon from an accused and/or whether it would be, in that case, violation of Article 20 (2) of the Constitution of India. It would be an endeavour for the trial Court to consider and appreciate that piece of evidence. Another fact which will have to be minutely considered is, in the FIR itself the informant says that applicant Varsha had asked him to check CCTV footage and then when he saw some objectionable acts on the part of applicant Kautik, he had copied CCTV footage in two Pen Drives. One was given to applicant Varsha and second has been kept by him with him. He is the person who had downloaded said CCTV

footage and therefore, in this kind of situation whether he can give certificate under Section 65-B of the Indian Evidence Act will have to be considered. In the submissions the learned Advocate for applicant Varsha has stated that in the earlier case when she was apprehending her arrest and then it was stated that she was absconding, she had asked informant to check CCTV footage, then if all that act was done by the informant under the authority given to him, then it cannot be stated that the informant is mere a third person.

06. As regards, the documents which have been produced raising doubt about the act and integrity of the informant is concerned and the fact that he has been suspended, it may be disciplinary action taken against him, but another fact that is required to be considered that cannot be taken into consideration at this stage and raise doubt about the bonafides of the informant.

07. For all these reasons, no case is made out for grant of any relief to applicant - Kautik s/o. Sahebrao Chavan in ABA No. 557 of 2022. His application deserves to be rejected at the threshold. The same is rejected accordingly.

08. However, as regards, applicants in ABA Nos. 558 and 559 of 2022 are concerned, case is made out to protect them till the papers are perused.

09. Issue notice to the respondent, returnable on 21.06.2022. Learned APP waives service of notice for the respondent/State.

10. In the meantime, in the event of arrest of applicant – Varsha w/o. Narendra Deore in ABA No.558 of 2022 and applicant – Narendra s/o. Atmaram Deore in ABA No.559 of 2022, in connection with Crime No. 114 of 2022, registered with Sakri Police Station, District - Dhule for the offence punishable under Sections 354-A of the IPC and sections 8,12,17 & 21(2) of the POCSO Act, they be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Fifteen Thousand) each.

11. Said applicants shall remain present before the Investigating Officer on every Monday and Thursday from 04=00 pm to 06=00 pm and co-operate with the investigation.

12. Said applicants shall not tamper with the evidence of the prosecution in any manner.

13. Said applicants shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]