

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

ANTICIPATORY BAIL APPLICATION NO.669 OF 2022

Manjoor @ Shaukat Mustafa Shaikh ...Applicant

VERSUS

The State of Maharashtra and another ...Respondent

...

Mr. S.R. Andhale, Advocate for the applicant.

Mr. S.B. Narwade, APP for the respondent-State.

Mr. Mahesh K. Bhosale, Advocate for respondent no.2.

...

CORAM : S.G. MEHARE, J.

DATED : 22nd JUNE, 2022.

PER COURT:-

1. Learned counsel Shri Mahesh K. Bhosale submits that he has instructions to appear for respondent no.2. He is allowed to enter his appearance.
2. Heard learned counsel for the applicant, learned counsel appeared for respondent no.2 and learned APP for the State at length.
3. After registering the crime, the complainant-respondent no.2 has filed an application before the learned Sessions Court that the misunderstanding is cleared and she has no complaint against the applicant. However, learned APP is strongly opposing the application contending that the applicant is married and has no business with the family of the Victim. He has raised a strong objection that the application filed before the learned Sessions Judge, declaring that the

mother has no right to give no objection to granting bail to the applicant before the learned Sessions Court. It is a matter of the interest of the Victim. He treats this application as an interference in the investigation. He also argued that the interest of the Victim, who is a minor, should be protected and for their protection, the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') is enacted. He would also refer to Section 29 of the POCSO Act and would submit that there is a presumption as to certain offences. He also stated that the victim, in her statement, has levelled serious allegations of administering the intoxicating substance. Therefore, Section 328 of the Indian Penal Code is applied. The investigation as regard administering intoxicating substance is required to be made. He pressed into service the statement of the victim under Section 164 of the Criminal Procedure Code. His strong opposition reveals that the applicant should not be released on anticipatory bail. He also referred to the statement of the victim under Section 161 of the Criminal Procedure Code.

4. Learned counsel for the applicant would submit that the complainant misunderstood the applicant and, in a fit of anger, she had lodged the report against him. However, after realizing the mistake, she gave no objection before the learned Sessions Court for granting the anticipatory bail to the applicant. Adding Section 328 of the Indian Penal Code is an act of police. Her Statement under

Section 164 of the Criminal Procedure Code is contradictory, and there are material improvements. The police were taking a keen interest in the matter and wanted to see the applicant behind bars. Hence, the possibility of tutoring her to give a peculiar statement under Section 164 of the Criminal Procedure Code cannot be ruled out. Section 29 of the POCSO Act would not attract in this case. Even today, the first informant, the mother of the victim has no grievance against the applicant. That apart, nothing is to be recovered and discovered from the applicant. Hence, he may be released on anticipatory bail.

5. Learned counsel appearing for respondent no.2 has no objection to releasing the applicant on anticipatory bail. She has no grievance against the applicant.

6. The POCSO Act has been enacted to protect children from sexual harassment. Special protection has been given to children from sexual offences who are below 18 years. The Act has been divided into different parts, and different punishments have been provided for different offences. The presumption under Section 29 of the said Act applies to the offences under Section 3, 5, 7 and 9 of the said Act. Herein case, Section 12 of the POCSO Act has been applied. That section has not been covered by Section 29; hence, there is no question of presumption as to the said offence. The statement under Section 164 is used for contradiction purposes. However, if the

statement is consistent, that may be a piece of corroborative evidence. In the first statement under Section 161 of the Criminal Procedure Code, the victim, who is 17 years has made no allegations about administering an intoxicating substance, but all of a sudden, she has levelled the allegation of administering an intoxicating substance in one hotel for the first time in her statement under Section 164 of the Criminal Procedure Code. The investigation papers reveal that she was not ready to go with her mother – the complainant. Hence, she was sent to the Children's home. This factum goes to show that she also had no complaint, but someone might have forced her to state alike. The statement of victim under Section 164 of the Criminal Procedure Code cannot be accepted as a gospel truth if not consistent with her previous statement at this juncture. Besides this, the complainant, who is the guardian mother of the victim has no grievance against the applicant.

7. Be that as it may, the fact remains that the prosecution must have material to satisfy the Court that unless the custodial interrogation is made, the investigation shall be incomplete. But nothing as such is with the Investigation Officer except insisting on declining the bail. In view of the aforesaid discussion, this Court is satisfied that this is a fit case to exercise the discretion of Section 438 of the Criminal Procedure Code. The application is liable to be allowed. Hence, the following order :

ORDER

(A) The Application is allowed.

(B) In the event of arrest the applicant, Manjoor @ Shaukat Mustafa Shaikh, in connection with Crime No.251/2022, registered with Tofkhana Police Station, District Ahmednagar for offences punishable under Sections 354-D, 328 of the Indian Penal Code and Section 12 of Protection of Children from Sexual Offences Act, be released on bail, on executing P.B. and S.B. of Rs.20,000/- (Twenty Thousand) with one solvent surety in the like amount, on the condition that he shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(C) Hamdast allowed.

(S.G. MEHARE, J.)