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

935 ANTICIPATORY BAIL APPLICATION NO.708 OF 2022

**SANGITABAI GOKUL PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr Vijay B. Patil, Advocate for applicant;
Mr A.A. Jagatkar, A.P.P. for respondent no.1;
Mr H.P. Randhir, Advocate for respondent no.2

CORAM : S. G. MEHARE, J.

DATE : 12th July, 2022

PC.

1. Heard the learned Counsel for the applicant, learned A.P.P. for respondent no.1/State and learned counsel for respondent no.2/victim.

2. The prosecution has a case that the co-accused Dnyaneshwar eloped the victim of 16 years. They stayed for 8 to 9 days at Ahmednagar. The mother of the victim has lodged the report of kidnapping the victim. The victim and main accused were apprehended at Ahmednagar and brought to the police station. It has been alleged against the applicant that she was insisting the victim to talk to the main accused. She was also threatening her that if she would not talk to him, she will tell her relations with the main

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accused to her parents. She had also threatened that if she would not talk with him, she would viral her photographs. It has also been alleged against the applicant that she is responsible for the relations of the victim with the co-accused. The victim was opposing to maintain the relations with the co-accused.

3. The learned counsel for the applicant has vehemently argued that the present applicant has no role to play. Her name has been taken first time on 13.4.2022 when the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure. He has referred to the statement of the victim recorded by child welfare committee and pointed out that there was no whisper against the applicant. He has also referred to the statement of the mother of the victim and again argued that she has also not stated anything against the applicant. The investigation is complete. The co-accused has already been released on bail. Having regard to her alleged role nothing is to be recovered and discovered from her. Therefore, the interim protection granted to her may be confirmed.

4. The learned A.P.P. has strongly opposed the application contending that the offence is serious. The statement under Section 164 of the Code of Criminal Procedure is very specific showing the role played by the applicant. The applicant had threatened the victim

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and taken her photograph. Therefore, her custodial interrogation is essential.

5. The learned counsel Mr. Randhir for respondent no.2/victim has vehemently argued that the victim was 16 years old at the time of the incident. The present applicant is the instrumental for the offence committed by the co-accused. The applicant has photographs of victim with her. The co-accused has already viral the photographs of the victim. Therefore, one another N.C. is registered. The victim is pregnant from co-accused. The photographs are still lying with the applicant. The victim has apprehension of viral of her photographs. The offence is apparently serious. The victim and applicant are the residents of the same village. Therefore, there is every possibility of tampering with the prosecution witnesses. He would rely on **State of Bihar Vs Rajballav Prasad Alias Rajballav Prasad Yadav Alias Rajballabh Yadav, (2017) 2 Supreme Court Cases 178**. Opposing the application strongly, he has prayed to dismiss the application.

6. In the case of **Rajballav's** (*supra*), the Hon'ble Apex Court in paragraph 26 has observed thus :

“We are conscious of the fact that the respondent is only an under-trial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts

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have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. After all, if there is a threat to fair trial because of intimidation of witnesses etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer.”

7. The Hon’ble Apex Court, considering the facts of the case and the conduct of the accused was pleased to cancel the bail granted to the accused by the High Court. Needless to state that, every case has its merit. The facts of the case relied upon by the learned counsel for the victim are different from the facts of the case in hand.

8. In the first statement of the victim recorded before the child welfare committee, the victim did not whisper against the applicant. Her statement recorded immediately when she was brought to her place. However, in her statement under Section 164 of the Code of Criminal Procedure which was recorded on 13.04.2022 before the learned Magistrate, she has alleged against the applicant that the applicant forced her to maintain the relations with the co-accused and she threatened her that if she would not maintain relations with him,

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she would tell her relations with him to her parents and she will make her photographs public. The learned Magistrate has observed the victim while recording the statement, that she had some apprehension in her mind, hence, the Court asked her mother to go out of the court hall. After her leaving the court hall, the victim has changed the version and protected the main accused. The learned counsel for the applicant has correctly pointed out that the possibility of tutoring cannot be ruled out. Her statement before the child welfare committee appears natural. Already the action has been taken for making the photographs of the victim public by registering the N.C. against the main accused. Statements are delayed and contradictory. Subsequent implication of the applicant may be a ground to consider the veracity of the facts. So far as the apprehension of tampering with the prosecution witnesses is concerned, it may be guarded by imposing certain conditions. The over all material placed before the Court reveals that the applicant has been brought into picture subsequent to the custody of the minor with her parents. In view of the material collected by Investigation Officer, this Court is of the view that the applicant is entitled to anticipatory bail. Hence, the following order -

- (i) The application is allowed.

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- (ii) The interim protection granted by this Court by order dated 07.06.2022 is confirmed on the same condition of bail bonds with following additional conditions -
- (a) The applicant shall attend the police station as and when called by the Investigating Officer on written notice.
 - (b) She should surrender her mobile handset to the police within one week from today,
 - (c) She shall not tamper with the prosecution witnesses.
 - (d) She shall not contact the victim any way till conclusion of the trial.

(S. G. MEHARE, J.)

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