

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

**ANTICIPATORY BAIL APPLICATION NO.826 OF 2021**

Akash S/o Chandrakant Bansode

**...APPLICANT**

**VERSUS**

- 1) The State of Maharashtra,
- 2) The Superintendent of Police, Beed,
- 3) X Y Z

**...RESPONDENTS**

...  
Mr.Govind A. Kulkarni Advocate h/f. Mr. D.R. Deshmukh  
Advocate for Applicant.  
Mr.N.T. Bhagat, A.P.P. for Respondent Nos.1 and 2.  
Mr.Anand Raka Advocate for Respondent No.3.  
...

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

**DATE : 14<sup>th</sup> FEBRUARY, 2022**

**ORDER :**

1. The applicant is apprehending his arrest in connection with Crime No.223 of 2021 registered with Ambajogai City Police Station, Ambajogai, District-Beed for the offence punishable under Sections 354, 354-A, 354-D, 452, 323, 504 of the Indian

Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. D.R. Deshmukh for the applicant, learned APP Mr. N.T. Bhagat for respondent Nos.1 and 2, and learned Advocate Mr. Anand Raka for Respondent No.3.

3. It has been vehemently submitted on behalf of the applicant that the applicant belongs to a poor family and therefore he got an employment on the post of ward boy for a period of three months at Dedicated Covid Health Center, Lokhandi Sawargaon, Taluka-Ambajogai, District-Beed, which is about 15 Kms. away from Ambajogai town. His job came to an end on 13<sup>th</sup> July 2021. He surprised to know that First Information Report came to be lodged against him by the mother of a minor girl from his own locality. The informant, who claims to be the real mother of the victim minor girl, alleges that applicant used to chase the minor girl and harass her. Though understanding was given to the applicant and his parents, there was no improvement in his behaviour. It has then alleged by the informant that on 11<sup>th</sup> June 2021 she was proceeding for a programme in the house of her mother at about 2.00 p.m., when

she could notice that the applicant was chasing her and after seeing that she has gone at a distance, he returned back and therefore, raising suspicion in her mind the informant returned home. She could find that her another daughter and son were playing in the court-yard, however, victim daughter was present in the house. She came inside the house when she could find that applicant had caught hold the hand of her daughter with ill-intention and definitely that intention was to commit some serious offence. When she raised voice, applicant threatened to commit rape on the informant as well as the daughter and by abusing them in filthy language and assaulting her by hand, he left the spot. According to the applicant, no such incident has taken place. He has been falsely implicated. The physical custody of the applicant is not required for the purpose of investigation. There is no direct or indirect evidence against him. The applicant is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that first and foremost thing is that the charge-sheet has been filed before the Special Judge under the POCSO Act. However, taking into consideration the manner in which the offence has been committed, the threats those are given even to the informant who is a married lady who was

objecting to the act done by the applicant with the minor daughter, he does not deserve any discretionary relief. Statements of witnesses have been recorded. Especially, the statement of the victim which has been recorded under Section 161 as well as 164 of the Code of Criminal Procedure is consistent about the involvement of the present applicant.

5. Learned Advocate Mr. Raka appearing for respondent No.3 – informant vehemently submitted that the seriousness of the offence is required to be considered here. The applicant and the informant are residing in the same lane. Victim girl is taking education in 9<sup>th</sup> standard, however, due to lock-down she is taking education from house. Since about a year prior to the incident, applicant used to follow the girl and was insisting that she should talk to him as he likes her. In spite of taking objection about the behaviour of the applicant with the girl, there was no improvement in him. On the day of incident applicant has given threat to commit rape on the informant as well as the victim. When such kind of anti-social act is done by the applicant, he should not be granted discretionary relief.

6. At the outset, it is to be noted that the Investigating Officer appears to be totally insensitive. The First Information

Report came to be lodged on 11<sup>th</sup> June 2021 and he has forwarded the charge-sheet on 13<sup>th</sup> December 2021. It will not be out of place to mention here that this Court, by order dated 2<sup>nd</sup> August 2021, had granted interim protection to the applicant, yet the nominal arrest of the applicant has been shown on 13<sup>th</sup> November 2021, and taking Bonds as well as surety from the applicant as per the order of this Court, the Investigating Officer has just forwarded the charge-sheet after a month thereafter. He has not taken pains to interrogate with the accused. When it was asked to the learned APP, as to whether charge-sheet was filed under Section 299 of the Code of Criminal Procedure, then the Investigating Officer was called, who remained present and given it in writing that the charge-sheet is not filed under Section 299 of the Code of Criminal Procedure. No doubt Section 299 of the Code of Criminal Procedure is an enabling section to the Courts of law to record the evidence against an absconding accused. But, herein this case, the Investigating Officer had arrested the applicant on 13<sup>th</sup> November 2021 though it appears that he had the knowledge about the order passed by this Court on 2<sup>nd</sup> August 2021, much prior to the date of nominal arrest of the applicant. There is no record produced by the Investigating Officer, as to

what he has done between 3<sup>rd</sup> August 2021 to 13<sup>th</sup> November 2021. He could have definitely called the applicant prior to that and by arresting the applicant, could have released him on bail as per the order of this Court and could have further interrogated and investigated the case. At the cost of repetition, it can be said that even after that nominal arrest on 13<sup>th</sup> November 2021, till 13<sup>th</sup> December 2021 it appears that the Investigating Officer had never called the applicant for interrogation / further investigation. In spite of these things, now he is objecting to the confirmation of the interim protection granted by this Court. This kind of approach is required to be deprecated. If the custodial interrogation of the applicant was anyway not required for the Investigating Officer then why he should object now, is the question.

7. As regards the seriousness of the offence is concerned, it was serious when the First Information Report was lodged and it is still serious. But, at the same time we are also required to consider whether the physical custody of the applicant is required for the purpose of investigation. It is to be noted from the order passed by the learned Additional Sessions Judge / Special Judge under the POCSO Act, that the Investigating Officer had given say and thereby objected to the anticipatory

bail to be granted to the applicant and ultimately that Court had rejected the application on 22<sup>nd</sup> June 2021. Which attempts the Investigating Officer had made to arrest the applicant, cannot be gathered from the charge-sheet and also the say which he has given to the learned APP of this Court. But, then we are concerned with the events that had taken place after the interim protection was granted by this Court on 2<sup>nd</sup> August 2021. After the nominal arrest of the applicant and filing of the charge-sheet, the Investigating Officer could have given it in writing to the learned APP that he does not require the custody of the applicant. No doubt, the prosecution is not mouthpiece of the police, yet the stand that prosecution takes is much dependent on the say of the Investigating Officer as he is the person to whom the custody is required for the purpose of investigation and therefore the actions of the Investigating Officer here, cannot be said to be justified. He should have plainly stated as to what are the facts and how he has proceeded, whether he requires the custody of the applicant or not, in specific words. To the seriousness of the facts of the case if the Investigating Officer gives such kind of treatment, then the informant and the witnesses may get demoralized. These observations will have to

be brought to the notice of the Superiors of the Investigating Officer.

8. Taking into consideration the events those have taken place, now it appears that the physical custody of the applicant is not required and the interim protection granted by this Court deserves to be confirmed. However, taking into consideration the fact that the applicant is resident of the same locality and for the safety of the victim who is still minor, certain restrictions / conditions are required to be imposed. Hence the following order:

### **ORDER**

- i) Application stands allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 2<sup>nd</sup> August 2021 stands confirmed. It is thus clarified that in the event of arrest of applicant – Akash S/o Chandrakant Bansode in connection with Crime No.223 of 2021 registered with Ambajogai City Police Station, Ambajogai, District-Beed, for the offence punishable under Sections 354, 354-A, 354-D, 452, 323, 504 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual

Offences Act, he be released on bail on PR Bond of Rs.20,000/- (Rupees Twenty Thousand) with one or more sureties in the like amount.

iii) The applicant shall not reside in Ambajogai City till the conclusion of the trial. He shall visit Ambajogai only for attending dates in the Special Case i.e. present case before the Special Judge under POCSO Act at Ambajogai.

iv) Applicant shall provide the detailed address of his residence to the Special Court under POCSO Act, where the case is pending and also to the Ambajogai City Police Station, Ambajogai, along with his mobile number and also the mobile numbers of his two near relatives, and shall comply with the requirements set out in Para No. 12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable

v) Copy of this order be given to the District Superintendent of Police, Beed for action, if any, against the Investigating Officer.

**[ SMT. VIBHA KANKANWADI , J. ]**