

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.2244 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.558 OF 2022**

SUDHAKAR NARAYAN DEORE AND ANR. ..APPLICANTS

VERSUS

VARSHA NARENDRA DEORE AND ANR. ..RESPONDENTS

**WITH
CRIMINAL APPLICATION NO.2243 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.559 OF 2022**

SUDHAKAR NARAYAN DEORE AND ANR. ..APPLICANTS

VERSUS

VARSHA NARENDRA DEORE AND ANR. ..RESPONDENTS

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Mr. A. D. Sonar, Advocate for the Applicants.

Ms. V. S. Choudhari, APP for Respondents-State.

Mr. A. D. Gade, Advocate for Respondent No.1 in
APPLN/2244/2022.

Mr. A. D. Ostawal a/w Mr. Mohit L. Deoda, Advocate
for Respondent No.1 in APPLN/2243/2022.

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CORAM : S. G. MEHARE, J.

DATED : 24th AUGUST, 2022.

PER COURT:-

1. These are applications filed by the management to intervene the applications filed by the applicants for the Anticipatory Bail. The management is not the complainant/the aggrieved person the victim.

2. The applicants are the Headmistress and assistant teacher in the school run by the applicant. An unfortunate incident of sexual

assault on a girl child happened in the school. Another teacher allegedly did the sexual assault. A clerk in the school allegedly supplied the video of the alleged incident to applicant no. 1. It has been alleged against the applicants that they did not take action against the culprit teacher; therefore, they have committed a crime, and they were protecting the culprit. Based on the report of the school clerk, who has various grievances against the Headmistress, a crime has been registered.

3. The question has arisen whether the applicant has a locus to intervene or oppose the bail application.

4. Mr. Sonar, learned counsel for the applicants, asked the question of how the applicants are entitled to intervene in the anticipatory bail applications. However, he did not explain to the Court any law or case law that a third party is entitled to intervene in the anticipatory bail application. However, it appears that the applicants and the present management have serious disputes. The arguments of the learned counsel Mr. Sonar reveal that the management wanted to throw the applicants out. The legal remedies were available to the management to take action against the applicants, but instead, they have come here to oppose the applications in which the prosecution has made a statement that there is absolutely nothing against the applicants.

5. The offence has been registered under the Protection of Children from Sexual Offences Act, 2012. Section 439 (1A) has been incorporated (by Act 22 of 2018) with effect from 21st April 2019}, stipulating that the presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub Section (3) of Section 376 or Section 376 AB or 376 DA or 376 DB of the Indian penal code.

6. The Bombay High Court in the case of **Arjun Kishanrao Malge Vs. The State of Maharashtra** in **PIL No. 5 of 2021** by speaking to the minutes dated 90/04/2021 in CR. PIL No. 52021 in paragraph no. 17 in the middle, has observed thus;

“ We thus find ourselves in agreement with the contention of the petitioner that akin the to the offences which fall und the Indian Penal code as set out int sub-section (1A) of Section 439 of Cr.P.C. with respect to the application for bail under the POSCO Act, the presence of informant or any person authorized by him shall be made obligatory at the time of hearing the application for bail.This would certainly be in consonance with the object of Section 40 of the POSCO Act read with Rule 4(13) and 4(15) of the POSCO Rules. To such extent, we also find ourselves in agreement with the directions of the Delhi High Court in its orders noted above”

7. In view of the above findings, the Bombay High Court has issued certain directions in paragraph no. 20, of its judgment as regards the notice of hearing of the bail applications under the POCSO

Act. Direction (b) is relevant to the present case, which reads thus;

(b) When an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the Child's family or as the case may be, the guardian and where a legal counsel is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation."

8. Recently the Hon'ble Supreme Court in the case of **Jagjeet Sing and ors Vs. Ashish Mehra @Monu and ors in Criminal Appeal No. 632 of 2022** dated **18.04.2022**, has laid down the law that the victim has a legally vested right to be heard at every step post the occurrence of an offence. Paragraph no. 24 is relevant; it is extracted thus;

"24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/she has a legally vested right to be heard at every step post occurrence of an offence. Such a 'Victim' has unbridled participatory right from the stage of investigation till the culmination of the proceedings in the appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/ informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony."

9. A clear law has been laid that in case an accused files an application for bail under the POCSO Act Covering the offences similar to Sections

376(3), 376-AB, 376-DA, and 376-DB of the Indian Penal code, the notice to the victim's/child's parents or guardian shall be mandatory.

10. In view of the law laid down by the Bombay High Court and the Hon'ble Supreme Court, in the cases cited supra, this Court is of the opinion that except the victim's/Child's parents or the guardian as the case may be, no one has a right to appear and participate in the bail application under POCSO Act. Therefore, the applicant has no locus to file the present applications.

11. Apart from the legal issue discussed above, The investigating officer, in his detailed reply dated 24.08.2022, submitted that nothing adverse was found against the applicants after making a due enquiry.

12. After realizing the mistake, the learned counsel for the applicants seeks an apology and leave to withdraw the applications. However, he has spent valuable time of Court and unnecessarily tried to harass the applicants. The case pertains to the life of a girl who is a student in the school. The POCSO Act has taken care to maintain the reputation and the right to privacy of such victims. Strict restrictions have been imposed upon the media also. The name of the victim or her parents shall not be made public. The purpose behind such provisions is to save a child from the ill eye and trauma of society. Unfortunately, in the present case, instead of protecting the

interest of a girl child, the first informant and the present applicants are trying to achieve their selfishness. Nobody has sympathy for the minor girl child. Unnecessary publicity is trying to be given to the case. In such a situation, a minor girl must have suffered mental trauma. Therefore, this Court is of the view that this is not a fit case to allow the applicants to withdraw the applications without cost.

13. In the circumstances of the case, leave is granted to withdraw the applications with a cost of Rs.50,000/- (Rs. Fifty Thousand Only). The applicants do pay the cost to the victim girl in this crime by depositing in the Bank account of the victim girl's parents within a week from today. The deposit receipt shall be submitted to this Court.

(S. G. MEHARE)
JUDGE