

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

ANTICIPATORY BAIL APPLICATION NO.991 OF 2021

DR. MANISHA W/O HIRAMAN CHORE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Mr. R.S. Deshmukh, Senior Counsel a/w Mr. Govind Shinde, Advocate i/b

Mr. D.R. Deshmukh, Advocate for the applicant

Mr. N.T. Bhagat, APP for respondent Nos.1 and 2

Mr. Shaikh Ashraf Patel, Advocate for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 20th JANUARY, 2022

PRONOUNCED ON : 21st FEBRUARY, 2022

ORDER :

1 Present applicant is apprehending her arrest in connection with Crime No.114/2020 dated 16.02.2020 registered with Karjat Police Station, Dist. Ahmednagar, for the offence punishable under Section 363 of the Indian Penal Code, 1860.

2 At the outset, it is to be noted that the investigation was complete and charge sheet has been filed on 02.03.2021, in which the

present applicant was shown as witness, however, it appears that later on the investigation has come with a case that the custody of the applicant is required in order to make inquiry about the alleged illegal abortion of the victim, that has been done at the hospital of the applicant and Sections 313, 471 of the Indian Penal Code have been added. Such report appears to have been given at a later point of time i.e. after the filing of charge sheet, before Special Court, under POCSO Act, Shrigonda, Tq. Shrigonda, Dist. Ahmednagar.

3 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant, learned APP Mr. N.T. Bhagar for respondent Nos.1 and 2 and learned Advocate Mr. Shaikh Ashraf Patel for the respondent No.3.

4 It has been vehemently submitted by the learned Senior Counsel representing the applicant that the applicant is medical practitioner having B.H.M.S. degree. She along with her husband Dr. Hiranman Chore run hospital by name 'Chore Hospital'. Hiranman Chore is M.D. Gynecologist in Ayurveda. Perusal of the First Information Report lodged by the father of the victim would show that it was only under Section 363 of the Indian Penal Code, as the victim went missing since 16.02.2020 and it was against one

Santosh Raju Kalange. The charge sheet would then show that victim was found on 31.12.2020 i.e. after about 10 months of the lodging of the First Information Report and she has stated that accused No.1 Santosh Kalange had kidnapped her. Initially they went to Lohare, Tq. Sangamner and stayed with the friend of accused No.1 for about 10-15 days. When it was realized by them that the police were searching them, her mobile was damaged and accused No.1 took her to Shirur, Dist. Pune. After meeting the maternal uncle of accused No.1, they took one room on rent at Shirur. While staying there, she alleges that, Santosh had sexual intercourse with her, several times. She became pregnant in April, 2020 and while taking her to the Doctor there should not be suspicion about her age and, therefore, Kishor Nannaware had changed the birth date of the victim on Aadhar Card and gave a false date, showing that she is major. It is stated that victim was 14 years of age at that time. Photo copies of the Aadhar Card were given to accused Santosh. Thereafter, when the victim was medically examined, it was found that there is problem in the fetus, so also, there was heavy bleeding to her and, therefore, in the month of July she was taken to Chore Hospital and then she says that the Doctor had aborted her. Victim and accused No.1 resided in that room on 30.12.2020 and thereafter the accused No.1 left her to Karjat, Dist. Ahmednagar on 31.12.2020. Thus, from her statement it is very much apparent that she has not given the name of the

Doctor, but the applicant is admitting that she had given some part of the treatment. Those documents were given by her to the police even prior to the charge sheet was filed. Applicant had given the photo copies of the degree certificates of her husband as well as of herself and also the experience certificate given by Dr. Indrakumar Bhise on 21.01.2007, stating that the applicant had worked under him, who himself was M.B.B.S. D.G.O., between 20.01.2005 to 20.01.2007 and it is certified that she has well experience in medical termination of pregnancy, normal and cesarean deliveries. Thus, she was the experienced person, though she may not have been authorized to practice independently.

5 It has been further submitted by learned Senior Counsel that the applicant has not done illegal termination of pregnancy of the victim. When the victim had come to her hospital, she had taken her history and at that time she had also shown the Aadhar Card to the applicant, of which photo copy was on the record of the hospital of the applicant and the photo copy of the same has been provided to the Investigating Officer. The applicant had referred the victim for sonography to Sai Imaging Centre. Even at Sai Imaging Centre the same Aadhar Card was shown. The report from Sai Imaging Centre showed that the findings suggest missed abortion. A detail statement of the applicant was recorded on 28.01.2021 i.e. prior to the filing

of the charge sheet, in which she has narrated, as to how the victim had come to her, what kind of treatment she had given and which documents she had taken from the victim. All the while the victim had repeated that she is the wife of the accused No.1 Santosh Kalange and she has completed age of 18 years. There was no question of forceful abortion of the victim as the sonography report also showed that the uterus was empty and due to the heavy bleeding the victim was very weak. The applicant had only given her antibiotics and asked her to take rest. On that day itself thereafter the victim went from that hospital with her husband. The copies of consent form taken from the victim, which has been signed by her as well as her husband on 16.07.2020, was given to the Investigating Officer. When all those documents are already on record with the Investigating Officer, there is no question of custodial interrogation of the applicant. She is ready to abide by the terms of the bail.

6 Learned APP strongly opposed the application and submitted that the custodial interrogation of the applicant is necessary, as the picture got clear after the age proof of the victim was made available. She had not completed age of 18 on 16.07.2020 when the applicant had examined the girl and according to the victim, abortion was done by the present applicant. The applicant has degree in homeopathy and she could not have performed

any operation on the victim. The statement of the husband of the applicant, who is also a medical practitioner, would stated that he was not available in the town on the day, therefore, the girl was examined by the applicant. When The applicant has done the illegal termination of pregnancy and the act is anti social, the physical custody of the applicant is necessary.

7 Learned Advocate Mr. Shaikh Ashraf Patel appointed to represent the cause of respondent No.3 objected the application and submitted that the abortion has been done by the applicant illegally, as she was not competent enough to carry out the said surgery. Applicant being the medical practitioner ought to have considered or would have raised suspicion about the real age of the victim, even by appearance. Therefore, when though she was minor, she has been illegally aborted and, therefore, discretionary relief need not be granted to the applicant.

8 At the outset, it is to be noted that the First Information Report was lodged on 16.02.2020, when victim went missing from the night of 15.02.2020 and it was against Santosh Kalange, under Section 363 of the Indian Penal Code. Ultimately the victim appears to have been found on 31.12.2020 and her statement was recorded on the same day by Investigating Officer, in presence of lady constable, mother of the girl. On the basis of her

statement, Sections 376(2)(I)(J)(N) of the Indian Penal Code and Section 3 punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 were added. Even in that statement itself the girl had made statement that she was taken by accused Santosh to Chore Hospital, Shirur, where she was aborted and, therefore, the Investigating Officer ought to have done every kind of investigation which was permissible and within the ambit. The girl was then, as it appears, was referred for medical examination. At the time of statement, the girl has stated her age as 14 years. At the time of medical examination she had given her birth date also. Admittedly she is minor. Thereafter, further investigation appears to have been done, which is inclusive of making inquiry with the present applicant. The applicant had given photo copy of the register kept at her hospital, showing the date of the visit of the patient, name of the patient, the place from where those persons have come and also their mobile numbers. Name of the victim has been recorded to the entry dated 16.07.2020. Further, the charge sheet also contains the photo copies of the degree certificate of the husband of the applicant as well as her own degree certificate i.e. certificate of registration issued by Maharashtra Council of Homeopathy, Bombay. There is also the experience certificate issued on 21.01.2007 by Dr. Indrakumar Bhise. Photo copy of the consent letter dated 16.07.2020 has also been made available to the Investigating Officer, which shows that not

only the victim had signed the same, it was signed by accused No.1 also, in the capacity as husband of the victim. It is not clear, as to for what purpose the consent letter was taken, but it is generally taken at the time of performing operation. Important point to be noted is that the photo copy of the Aadhar Card, which was shown to the applicant, has also been made available by the applicant to the investigation, which gives her date of birth as 14.07.2001. Even according to the applicant, that change has been done by co-accused. Further document on record is reference letter given by the present applicant to the Sai Imaging Centre and the sonography report given by the said centre to the applicant. The report states, "The uterus is gravid. A single, intrauterine gestational sac is seen. A fetal pole measuring 21 mm is seen which corresponds with the gestational age of 8 weeks 5 days. The fetal cardiac activity is absent." The impression has been given that "findings" are suggestive of missed abortion. If we consider the provisions of the medical termination of pregnancy Act, 1971, then, what is impermissible is if the pregnancy is exceeding 12 weeks. One Amit Karnawat is the Doctor, who runs Sai Imaging Centre. His statement is clear enough in stating that the victim was sent by the applicant for examination. He is also saying that photo copy of the Aadhar Card was shown by the victim, which showed that she has attained the age of 18. The photo copy of the Aadhar Card, which was taken by him, appears to have been submitted to the Investigating

Officer. Therefore, taking into consideration the fact that an impression was given by the victim and accused No.1 that the victim is major. Victim has not explained that when the applicant was examining her and as usually it happens even the husband of the pregnant lady will not allow to come in the checking room; victim had not informed that she has been kidnapped and she is minor. According to the applicant, she had given only the antibiotics to the victim, taking into consideration the loss of blood and the weakness due to the missed abortion. We may not go into much details of what amounts to missed abortion, because as per one theory of missed abortion is typical, which has no symptoms besides amenorrhea and the patient finds out that the pregnancy has stopped when a fetal heartbeat is not observed or heard at the appropriate time. It may not also cause bleeding to the pregnant lady. But then another theory it is the growth of the child is stopped and the child is died in the womb. If the fetus has died in the womb due to the stoppage of its growth which was natural, then, whether it amounts to offence under Section 313 of the Indian Penal Code, will have to be decided by the Trial Court, taking into consideration the evidence that would be put forward.

9 It appears that merely because now the things are appearing that the victim turned out to be a minor and she is alleging that she has been aborted, it appears that those Sections have been added. Even the

supplementary statements of certain witnesses have been recorded including the statement of the victim, which is in fact, replica of her earlier statement.

10 When it appears from the documents, which are in the charge sheet itself, that precautions have been taken by the present applicant in the nature of taking photo copy of the Aadhar Card for the confirmation of the age, then, it cannot be said that there was any ill intention on the part of the applicant along with or any conspiracy with accused No.1. We may not go into details as to what kind of treatment that was given by the present applicant to the victim, because even the victim has not stated that she was taken to operation theatre and then the operation was performed. The termination of pregnancy could not have been done at any other place than the operation theatre.

11 Further, the Investigating Officer though everything was available with him had posed the present applicant as witness. The physical custody of the applicant is not required for the purpose of investigation, which is in fact, already complete and, therefore, she deserves to be released on bail. This Court had granted interim protection to the applicant earlier. That deserves to be confirmed and accordingly, it is confirmed.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 30.08.2021, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. Dr. Manisha w/o Hiranman Chore, in connection with Crime No.114/2020 dated 16.02.2020 registered with Karjat Police Station, Dist. Ahmednagar, for the offence punishable under Section 363, 376(2), (I), (J), (N), 363, 465, 313, 471 read with Section 34 of the Indian Penal Code, 1860, she be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 Applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

4 She should cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)