

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1073 OF 2021

ASHA W/O SAMPAT KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicant : Mr. M. B. Sandanshiv
APP for Respondent No.1-State : Mr. N. T. Bhagat
Advocate for Respondent No.2 : Mr. G. A. Kulkarni (Appointed)

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-02-2022.

ORDER :

1. The applicant is apprehending her arrest in connection with Crime No.604 of 2021, registered with Newasa Police Station, District Ahmednagar, for the offences punishable under Section 363, 366, 506 read with 34 of the Indian Penal Code and Section 11, 12, 17 and 18 of the Protection of Children from Sexual Offences (POCSO) Act.
2. Heard learned Advocate Mr. M. B. Sandanshiv for applicant, learned APP Mr. N. T. Bhagat for Respondent No.1-State, and learned appointed Advocate Mr. G. A. Kulkarni for Respondent No.2.
3. It has been vehemently submitted on behalf of the applicant that the informant has contended that at about 12.00 p.m. on 09-08-2021,

when she could not find her daughter aged around 16, she took search. She heard the voice of the daughter from a rented premises and then she called her. The daughter came out of the house. Upon the inquiry, the daughter informed that when she was washing clothes near water tank, one Pradip Sampat Kamble and Jaydeep Sampat Kamble and their mother, whose name she was unable to tell, went near her and Pradeep told the minor that he loves her and want to marry with her. Then accused Jaydeep and mother told that she should marry Pradeep and they will take good care of her. That mother is the present applicant. Minor told the informant that she told the accused persons that behind the back of her parents, she will not come, and then those three persons told her that if she does not accompany them, they would kill her mother and then they had forcibly taken away the girl. Thereafter, the FIR has been lodged. It has been then submitted on behalf of the applicant that whatever has been stated by the informant is hearsay, and therefore, what has been stated by the minor, is important. The police papers would show that the minor is not corroborating to the statement of the mother. Even in the order of granting regular bail under Section 439 of the Code of Criminal Procedure, the learned Additional Sessions Judge, Newasa on 02-09-2021 had made statement that informant

and her daughter have denied and declined for conducting the medical examination. The custodial interrogation of those who were arrested, was not necessary, was the opinion expressed, and therefore, bail was granted. Under such circumstances, the mother's custody is also not required. The interim protection granted by this Court on 05-10-2021 deserves to be confirmed.

4. Per contra, the learned APP submitted that there are statements of the witnesses showing that the applicant has also taken part in the commission of the crime. Though the medical examination was refused or declined earlier, it was got conducted through the consent of the informant and the victim on 13-08-2021. Statement of the victim has been taken under Section 164 of the Code of Criminal procedure also. When the mother has helped the sons in commission of the crime, her custodial interrogation is necessary taking into consideration the seriousness of the offence.

5. Learned Advocate Mr. G. A. Kulkarni (appointed) to represent the cause of respondent no.2 also submitted that the custodial interrogation of the applicant is necessary.

6. The contents of the FIR have already been reflected in the

forgoing para, and therefore, they are not reproduced here. Definitely the FIR has been lodged on the basis of alleged information given by the victim to the mother. However, at this stage itself, it will not be out of place to mention here that her statement has been recorded under Section 164 of the Cr.P.C., wherein she has stated that she used to talk to Pradeep since about two years and they are in love with each other. Her parents had given understanding to her that she should not do that and still they used to talk to each other. Her elder sister had come for delivery a month prior to the incident and at that time she raised doubt that the victim would run away with Pradeep, and therefore, her sister had brought her parents to the water tank, and at that time Jaydeep had assaulted informant and her husband. Case was registered in respect of the same. Thus, from the said statement before learned Magistrate under Section 164 of Cr.P.C., she is accepting that she had gone for washing clothes at about 10.00 a.m. on 09-08-2021, but then she states that she herself had gone to the house of Pradeep as his mother was ill and she went there to meet her. Thus, she is discarding the theory of kidnap or abduction, as the case may be. The said statement under Section 164 of Cr.P.C. appears to have been recorded on 26-08-2021 before the learned

Magistrate, however, it was not placed before the learned Additional Sessions Judge on 02-09-2021 when the learned Additional Sessions Judge had considered the application filed by co-accused under Section 439 of Cr.P.C. No doubt, it was not recorded when the anticipatory bail application of the present applicant was rejected by the learned Additional Sessions Judge on 25-08-2021. If a minor girl goes to meet her friend voluntarily, would amount to kidnapping, is a question. In view of the said fact as well as the medical report is not stating that she had sustained any sexual assault in the form of visible injuries on her body, the physical custody of the applicant is not necessary, and therefore, the application deserves to be allowed. The interim protection granted earlier by this Court deserves to be confirmed. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The interim protection granted by this Court on 05-10-2021 to the present applicant Asha w/o Sampat Kamble is hereby confirmed. In other words, in the event of arrest of the applicant in connection with Crime No.604 of 2021, registered with Newasa Police Station, District Ahmednagar, for the offences punishable under Section 363, 366, 506 read with 34 of the Indian Penal

Code and Section 11, 12, 17 and 18 of the Protection of Children from Sexual Offences (POCSO) Act, she be released on PR of Rs.20,000/- (twenty thousand) with one or two sureties of like amount.

3) The applicant shall not tamper with the evidence of the prosecution in any manner.

4) She shall not indulge in any criminal activity.

5) Fees of the appointed advocate is quantified at Rs.5000/- (in words rupees five thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-