

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

ANTICIPATORY BAIL APPLICATION NO.1406 OF 2021

ANANT SHIVAJI NAGARGOJE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. S.S. Shinde, Advocate for the applicant

Mr. V.M. Kagne, APP for the respondent No.1

Mr. R.P. Patwardhan, Advocate (appointed) for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th FEBRUARY, 2022

PRONOUNCED ON : 04th MARCH, 2022

ORDER :

1 Applicant is apprehending his arrest in connection with Crime No.414/2020 dated 29.12.2020 registered with Sonpeth Police Station, Dist. Parbhani, for the offence punishable under Section 354, 354-A of Indian Penal Code, 1860 and under Section 8 of the Protection of Children from Sexual Offence Act, 2012.

2 Heard learned Advocate Mr. S.S. Shinde for the applicant, learned APP Mr. V. M. Kagne for the respondent No.1 and learned Advocate

Mr. R.P. Patwardhan for the respondent No.2 - original informant.

3 It has been submitted on behalf of the applicant that applicant has been falsely implicated. Informant is the father of the minor victim. Informant states that when he returned around 4.30 p.m. to his house on 28.12.2020, he was informed by his daughter that when she (victim) had gone for answering nature's call around 8.00 a.m., applicant had followed her and by catching her hand told her that she is pretty and he loves her. He would marry her and she should allow him to have sexual intercourse with her. When the victim had rescued her hand, applicant threatened that if she discloses anything to her parents, then he could cause harm to them. Informant had then asked his daughter as to whether any other act has been done by the applicant with her. Victim answered in negative. Then informant lodged First Information Report.

4 It has been submitted by the learned Advocate for the applicant that no such incidence as narrated in the First Information Report had taken place. Informant has suppressed material facts. The story narrated in the First Information Report is nothing but concocted. The story in the First Information Report will not attract ingredients of offence punishable under Section 8 of the Protection of Children from Sexual Offences Act. Nothing is required to be recovered or discovered from the applicant. Custodial

interrogation of the applicant is not required for the purpose of investigation. He is ready to abide by the terms of the bail.

5 Per contra, the learned APP has strongly opposed the application on the ground that the contents of the First Information Report and statements of the witnesses recorded so far disclose specific role of the applicant. Applicant is from the same village of the informant and, therefore, has every knowledge that victim is minor, still he has behaved in such a way with her. When such offences are rampant, then it is but natural for the father and mother to be worried for daughter. Such persons, who commit offence against minor girls, are required to be dealt with sternly, so that nobody would do such acts in future. Offence is serious, anti-social and there is prima facie evidence against applicant. He does not deserve pre-arrest bail.

6 Learned Advocate for informant submitted that informant is not attached to any political party. There was no question of suppression of material fact while lodging the First Information Report. Victim is only 14 year old girl. Applicant had caught hold of her hand with sexual intent and his statement is sufficient to infer about that sexual intent. Ingredients of the offence punishable under Section of 8 of POCSO Act are, therefore, attracted. Applicant does not deserve discretionary relief of anticipatory bail.

7 Contents of the First Information Report have been narrated in earlier paragraphs and, therefore, they are not reproduced now. Perusal of those contents would indicate the act alleged against applicant is that he had caught hold of hand of the victim and expressed his feelings for her. Definitely, a boy/man cannot forcibly assert his feelings on a girl/woman. There should be consent of the girl/lady. When applicant was knowing that the victim is minor, he ought not to have insisted that the girl should accept his proposal of love. Feelings of love also has its own limitation. Expressing desire to marry can be understood, but it cannot go beyond that. He cannot ask for sexual favour from a minor girl. There cannot be justification of such acts.

8 Though the act alleged against applicant is serious in nature from the angle of social norms, yet those contentions in the First Information Report definitely give an impression that physical custody of the applicant may not be required for the purpose of investigation, as well the purpose would be served if attendance is given. There is nothing to be recovered at the instance of applicant. The defence of alibi raised by the applicant need not be considered at this stage, as he has to establish the same during the course of trial. This Court had granted interim protection to the applicant. It has not been reported that the applicant has anyway misused the liberty.

Therefore, the interim protection granted to the applicant by this Court on 06.12.2021 deserves to be confirmed. No conditions were imposed at time of grant of interim order. Therefore, conditions are required to be imposed on him. Taking into consideration the fact the present applicant is resident of same village where the victim is residing, it is necessary to restrain the applicant from going to the village, till the conclusion of trial. Hence, following order.

ORDER

1 Application stands allowed.

2 Interim protection granted by this Court earlier to applicant vide order dated 06.12.2021, 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. Anant Shivaji Nagargoje, in connection with Crime No.414/2020 dated 29.12.2020 registered with Sonpeth Police Station, Dist. Parbhani, for the offence punishable under Section 354, 354-A of Indian Penal Code, 1860 and under Section 8 of the Protection of Children from Sexual Offence Act, 2012, he be released on P.R. of Rs.20,000/- (Rupees Twenty Thousand only) with one or two sureties of like amount, if not already released.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the evidence of the prosecution, in any manner.

4 Applicant should remain present before the Investigating Officer on every Monday and Friday between 11.00 a.m. to 02.00 p.m., till filing of the charge sheet and co-operate with the investigation.

5 Applicant shall not reside in and visit Mankadevi, Tq. Gangakhed, Dist. Parbhani till the conclusion of trial.

6 Applicant shall inform where he intends to stay during the period of trial, to the Investigating Officer and give full and correct address of the same. He shall not change that address, and if at all such occasion arises, then, he may intimate the fresh address to the Investigating Officer as well as Trial Court as and when required.

7 Applicant to share his mobile number to the Investigating Officer.

8 The fees of the appointed Advocate is quantified Rs.5,000/- (Rupees Five Thousand only) to be paid by High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)