

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

16 ANTICIPATORY BAIL APPLICATION NO.1423 OF 2021

ABDUL RAHEEM @ HAZI S/O ABDUL SAJID BAGWAN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. V.D. Salunke, Advocate h/f Mr. A.S. Deshpande, Advocate for the
applicant

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

Mr. F.K. Patel, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st JANUARY, 2022.

ORDER :

1 Applicant is apprehending his arrest in connection with Crime No.155/2021 registered with Basmatnagar Rural Police Station, Dist. Hingoli, for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860, under Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(2)(5), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. V.D. Salunke holding for learned

Advocate Mr. A.S. Deshpande, learned APP Mr. V.M. Kagne for the respondent No.1 and learned Advocate Mr. F.K. Patel for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that if the First Information Report is considered the informant-prosecutrix gives her age as 18 years 01 month and she had lodged the report against her lover only. There is absolutely no mention of name of present applicant in the First Information Report. However, it is the prosecution story that later on in the supplementary statement and statement under Section 164 of the Code of Criminal Procedure, she has made accusations against 11 more persons and in that name of present applicant has been taken. It is alleged that when the informant used to go for agricultural activities in the field of one Sadik, at that time, Sadik's son Haji (nephew of Ex-Sarpanch) had developed acquaintance with her and by blackmailing her that as to how she has established sexual relations with another person she should keep sexual relations with him and thereafter he had forcibly sexual intercourse with her. In fact, there was absolutely no connection between the prosecutrix and the applicant. It appears that under some political pressure name of the present applicant has been arrayed, that too, in the supplementary statement. Even before the learned Additional Sessions Judge the informant's mother had given it in writing that she had not disclosed the name of the present

applicant. Therefore, the physical custody of the applicant is not required. He has been granted interim protection, that deserves to be confirmed.

4 Before turning towards the submissions on behalf of the State, note is required to be taken of the affidavit filed by the respondent No.2. She has stated that she and her mother had filed say/affidavit before learned Additional Sessions Judge, Basmatnagar and that is their say before this Court also. If we consider the said affidavit filed before learned Additional Sessions Judge, then, it can be seen that the mother of the informant has clearly stated that the informant had not named the present applicant, rather it is stated that informant and her mother usually go for labour work to the field of the applicant and those persons are good to them. No ill act was performed by the present applicant with the informant.

5 Now, turning towards the objections raised by the prosecution, the learned APP submitted that in the supplementary statement the identity of the present applicant is stated to be nephew of Ex-Sarpanch. Applicant in his application before learned Additional Sessions Judge has disclosed that his uncle was Sarpanch and, therefore, there are political rivals of the family. Therefore, when the identity is established further thing will have to be considered. As regards the present applicant is concerned, the

supplementary statement states that he has done the act after she had returned to her village after July, 2020. She has clearly named the present applicant and the statement has been made that the present applicant was having knowledge that co-accused had forcibly established sexual relations with the victim. He expected that she should maintain the relationship with him. Therefore, taking into consideration the nature of the offence, the manner in which it was committed, the applicant does not deserve to be released on anticipatory bail. So also, it appears that he has already pressurized the informant and her mother and, therefore, possibility of tampering with the evidence cannot be ruled out. On this count itself the learned Additional Sessions Judge has rejected the bail application.

6 The respondent No.2 has lodged report on 10.07.2021 when she was 18 years and 01 month old, but she states about the alleged incidences which have taken place about a year or so prior to that date. No doubt, as regards the First Information Report is concerned, it is only against one person who is stated to be her lover. She has stated that she got married on 25.04.2021 and within a month when she had developed stomach ache and was referred to medical examination, it was revealed that she was pregnant of 19 weeks and 03 days i.e. 05 months and, therefore, it is then stated that her husband and the informant entered into an agreement of divorce on

02.06.2021 and since then she is residing with her parents.

7 In her supplementary statement, as aforesaid, she has stated names of about 11 more persons, who had allegedly done sexual assault on her at different places. As against the present applicant is concerned, she states that, that incident had taken place after July, 2020 when she returned from her maternal uncles house. It is to be noted that statement under Section 164 of the Code of Criminal Procedure has been recorded by learned Magistrate, Basmatnagar on 20.07.2021. She gives a slightly different version and then she states that in the last year she had gone to field of one Haji for taking sweet lime along with certain ladies. Then she states that she had gone to take water near Akhada, at that time, Haji caught hold of her and had forcible sexual intercourse with her. So, this version is different from what has been stated by her in her supplementary statement. Thus, even at this stage, we can get three different versions of the informant.

8 The investigation appears to have been completed and the charge sheet is filed. There is nothing in the charge sheet to show that the applicant was ever absconding and there were attempts to arrest him and at that time the applicant could not be traced out. Therefore, we cannot say that the applicant was absconding.

9 The respondent No.2 and her mother are now saying that name of the present applicant was not taken before the Investigating Officer as well as before the learned Magistrate. The learned Additional Sessions Judge has inferred this fact as attempt to pressurize the informant and her mother. Even if we keep aside that say; yet, the fact remains that there are different versions on the face of record in respect of the informant and the main fact is that when the First Information Report is lodged it was only against one person. In the normal course if there would have been a settlement between the prosecutrix or informant and the accused or any such attempt would have been made, it could have been termed as attempt to tamper with the evidence of prosecution. But this is a different case, wherein the informant herself had given different versions and, therefore, merely because now the informant and her mother are saying that offence was not lodged against the present applicant, we cannot take it as an attempt to tamper with the evidence. Therefore, the applicant, in view of the above said facts and circumstances, deserves to be released on anticipatory bail. The interim protection granted earlier deserves to be confirmed. Accordingly, it is confirmed.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 26.11.2021, 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. Abdul Raheem @ Haji s/o Abdul Sajid Bagwan, in connection with Crime No.155/2021 dated 10.07.2021 registered with Basmatnagar Rural Police Station, Dist. Hingoli, for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860, under Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(2)(5), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on P.R. of Rs.20,000/- (Rupees Twenty Thousand only) with one or more sureties in the like amount.

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 shall cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)