

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

ANTICIPATORY BAIL APPLICATION NO.1462 OF 2021

Pradeep S/o Himmat Dagadkhair

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) XYZ - Victim

...RESPONDENTS

...
Mr.Nitin K. Chaudhari Advocate for Applicant.
Mr.D.R. Kale, P.P. for Respondent No.1 – State.
Mr.Yogesh Bolkar Advocate h/f. Mr.K.B. Jadhav
Advocate for Respondent No.2.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 11th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 4th APRIL 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.317 of 2021 registered with Pachod Police Station, Taluka-Paithan, District-Aurangabad, for the offence punishable under Sections 376, 376(2)(n), 376(2)(j), 341, 354-A, 354-D,

366, 506 read with Section 34 of the Indian Penal Code, Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w), 3(2)(v) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard learned Advocate Mr. Chaudhari for the applicant, learned Public Prosecutor Mr. Kale for respondent No.1 – State and learned Advocate Mr. Bolkar holding for learned Advocate Mr. Jadhav for respondent No.2. In order to cut-short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. Before proceeding further, it will have to be put on record that the First Information Report (for short "FIR") which is lodged by a minor girl does not make a mention about the present applicant, however, in her statement under Section 164 of the Code of Criminal Procedure, she had told that the present applicant and co-accused Vijay, whose name was already appearing in the FIR, had dragged her in the field and after the co-accused had raped her, the applicant had tried to rape her but she resisted. She called her brother and till then both the

accused had fled away from the said spot, but they both were nabbed by the brother and sisters of the informant and they were given in the custody of PSI Mr. Kharad of Pachod Police Station. She had also stated that she had given the oral complaint but since relatives of accused Vijay came there, Police allowed him to go and the present applicant fled away. The written complaint was not taken by the Police and rather they told that the matter should be settled outside the Police Station. Therefore, taking into consideration those allegations, this Court had directed that the inquiry should be made into this aspect by S.D.P.O., Paithan. However, it was found that S.D.P.O., Paithan had not made the inquiry properly, he was again directed to take statements of concerned police persons, as to whether the girl had come to lodge the complaint and whether the accused persons were brought to the Police Station. It was also directed that the S.D.P.O. should consider the CCTV footage of the Police Station. Thereafter, the detailed inquiry appears to have been made by the S.D.P.O., Paithan and report has been submitted. He had recorded submissions of Police persons who were on duty at the relevant time and all of them have stated that no such incident i.e. bringing the accused (including the applicant) by the informant and her family members had taken place. It was then

rather stated that since the PSI Mr. Kharad had taken stern actions against the persons from Pardhi community, they were annoyed and informant is also from Pardhi community and they had taken the chance to make allegations against him. Basically, we are not concerned as to why the allegations have been made by the girl against the PSI Mr. Kharad, but we are interested to know whether such fact, that both the accused persons were caught hold by the public and were given to Police, had happened or not. From the available evidence it appears that no such incident had taken place.

4. Now turning to the facts of the case, perusal of the FIR would show that informant has not made any allegations against the applicant on 27th September 2021 and the FIR was lodged against one Vijay Aher. It was then rather stated that informant and said Vijay came in contact with each other and they used to talk thereafter. They had love affair and by giving her promise to marry, he had kept sexual relations with her many times, but thereafter when she started insisting that they should marry, he started avoiding and he went away somewhere. She was searching for him for about two months prior to the FIR and when she could not find him, she lodged the report.

5. It appears that, thereafter when her statement under Section 164 of the Code of Criminal Procedure was recorded, she has given a different story. The statement which appears to have been recorded before the Magistrate under Section 164 of the Code of Criminal Procedure is not made available. However, the say of the informant before the learned Additional Sessions Judge when the present applicant had filed application for anticipatory bail, has been made available, which contains what informant had stated before the Magistrate. From the said statement, it can be seen that she has not given the date or approximate month when the alleged incident had taken place. She states that she had gone for marketing at Viha Mandava when the present applicant and co-accused Vijay followed her. They purchased clothes for her and then she returned to the sugar factory area where she was residing. She then states that thereafter both the accused persons started demanding sexual favour and told that if she fails to go along with them, she would be killed. They both dragged her in nearby field. Accused Vijay committed rape on her and thereafter when present applicant tried to have sexual intercourse with her, she resisted and then she raised voice for her brother.

6. If these two stories are seen together, then the same appear to be not in consonance with each other. As aforesaid, informant has not stated when the said act was done by both the accused with her and from the statement made by her, it appears to an attempt to commit rape by the present applicant as she states that she had resisted him and he could not do the act. It appears that her further supplementary statement was recorded after her statement under Section 164 of the Code of Criminal Procedure and then she has stated that because of the confusion, she could not mention the incident which was committed by both the accused when she had gone to lodge the report and she has lodged the report only against Vijay. This Court would refrain itself from making any further comment, but since both the incidents are different, one was told in the FIR and another was not, and further now it has come on record that no such incident of taking both the accused to the Police Station and handing their custody to the Police, had taken place, the applicant's liberty deserves to be protected. This Court has granted interim protection to the applicant on 6th December 2021 which deserves to be confirmed, by imposing certain conditions. Accordingly, following order is passed:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 6th December 2021 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Pradeep Himmat Dagadkhair in connection with Crime No.317 of 2021 registered with Pachod Police Station, Taluka-Paithan, District-Aurangabad, for the offence punishable under Sections 376, 376(2)(n), 376(2)(j), 341, 354-A, 354-D, 366, 506 read with Section 34 of the Indian Penal Code, Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w), 3(2)(v) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on bail on PR Bond of Rs.25,000/-, with one or two sureties in the like amount, if already not released.
- iii) The applicant shall attend Pachod Police Station on every Monday between 10.00 am. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

v) Applicant shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]