

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

ANTICIPATORY BAIL APPLICATION NO.1523 OF 2021

- 1) Shivraj Pandurang Shinde,
- 2) Balaji Sadashiv Wadje

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) The District Superintendent of Police,
Nanded, District-Nanded,
- 3) A.B.C.

...RESPONDENTS

...
Mr.Anil M. Gaikwad Advocate for Applicants.
Mr.B.V. Virdhe, A.P.P. for Respondent Nos. 1 and 2.
Mr.S.B. Bhosale Advocate for Respondent No.3.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 16th MARCH 2022

DATE OF PRONOUNCING ORDER : 13th APRIL 2022

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.162 of 2021 registered with Loha Police Station,

District-Nanded for the offence punishable under Sections 534, 354-A, 354-D, 506 read with Section 34 of the Indian Penal Code and under Sections 8, 12, 17 of the Protection of Children from Sexual Offences Act and under Section 66 (c) of the Information Technology (Amendment) Act 2020.

2. Heard learned Advocate Mr. Gaikwad for the applicants, learned APP Mr. Virdhe for respondent Nos.1 and 2 and learned Advocate Mr.Bhosale for respondent No.3.

3. It has been vehemently submitted on behalf of the applicants that there is inordinate delay in lodging the First Information Report (for short "FIR"). In fact it is filed after two months of the alleged incident. Main accused Shubham Shivaji Shinde came to be arrested on 13th August 2021 and after the completion of the investigation, even the charge-sheet has been filed by showing the present applicants as absconding. However, the applicants never absconded. They had immediately then approached the learned Sessions Judge for anticipatory bail, but their applications have been rejected and therefore, they have come before this Court. The applicants have been falsely implicated in the crime. The main allegations are against the

arrested accused. Applicant No.1 – Shivraj Shinde is permanent resident of village Yellur and applicant No.2 – Balaji is resident of village Masalga. It is hard to believe that for any such incident they would have gone to the place which is about 20 Kms. From the place of their residence. The applicants have cleared their S.S.C. Examination in 2015 and they have taken admission in Shahir Annabhau Sathe College at Mukhed, which is 30 to 40 Kms. Away from Loha. They were attending the college regularly and therefore, it cannot be said that they were absconding. They had even appeared for their final examinations. There was love affair between the informant and accused No.1 – Shubham. Her parents were against the said affair and it appears that she had tried to immolate herself and when asked about the act, she has falsely implicated all of them in order to save herself. The custodial interrogation of the applicants is not required. They are ready to co-operate with the investigation.

4. Per contra, the learned APP appearing for respondent Nos.1 and 2, as well as learned counsel for respondent No.3 - informant strongly opposed the application and submitted that the applicants were absconding and accused Shubham was arrested. As it was necessary for the Investigating Officer to file

the charge-sheet within the period of sixty days, therefore, he has filed the charge-sheet but the investigation is still incomplete so far as the allegations against the present applicants are concerned. It will not be out of place to mention her that the matter was adjourned to seek clarification from the Investigating Officer as to what efforts he had made to get the custody/ arrest the applicants. Say has been given and certain entries in the general diary maintained with Loha Police Station, District-Nanded from 12th August 2021 have been produced, which shows that there was consistent effort to arrest the applicants but they could not be found and therefore, they do not deserve discretionary relief under Section 438 of the Code of Criminal Procedure. As regards the role attributed to the applicants is concerned, they used to be along with main accused – Shubham and they had taken photographs of the informant and Shubham. Shubham had given threat that he would make those photographs viral. Initially due to fear informant has not disclosed the fact to her parents but when it was found that the accused persons had created fake account on Instagram and Facebook in the name of the girl and they were uploading messages and videos. Therefore, she had tried to immolate herself on 26th May 2021 around 3.00 p.m. after the incident

that had allegedly taken place at 12.30 noon and she had come back to her house. Then, because of the burn injury she was shifted to hospital at Nanded and then at Latur. The informant recovered and thereafter lodged the report. The behaviour of the applicants with the girl, who is minor, dis-entitles them from seeking anticipatory bail.

5. The FIR has been lodged by the girl on 12th August 2021. In her FIR she has stated that she used to go for coaching class since December 2020. Since January 2021 accused Shubham used to harass her and he was forcibly asking her for friendship. He also used to talk with her in a way to ask sexual favour. The present applicants used to be with Shubham and they used to take photographs of the girl and the accused No.1 Shubham in the Mobile of accused No.1. Thereafter when she refused to go with Shubham, he got annoyed and started giving threat to defame by making her photographs viral. They had created a fake profile on Facebook and after sending request to her friends, had made those photographs as well as videos viral. She asked him as to why he is doing so and why he is defaming, then he had asked her to keep sexual relations with him, to which she refused. Then she says that on 26th May 2021 she had gone to

purchase grocery and while returning, all the three accused met her. Accused Shubham caught hold of her hand and tried to man-handle her. Even the applicants had caught hold of her hands and she was taken near a dilapidated wall. Accused Shubham then forcibly hugged her and put hand on her chest. She resisted and fled away from the spot. She felt ashamed and then set herself to fire at about 3.00 p.m. She was then taken to hospital at Nanded and in the FIR itself she says that in order to conceal the real facts from the parents she has told that she got burn injuries while bringing the milk to heat. She had taken treatment in Latur hospital for about 1 and ½ months and then came to home. However, again when accused No.1 Shubham started putting photographs on Whats-app, Instagram and Facebook, she told the story to parents and then lodged the report.

6. Perusal of the FIR as well as the entire charge-sheet, it can be seen that the role attributed to the present applicants is that they used to be with accused No.1 – Shubham and they had taken photographs in the Mobile of accused No.1. Accused No.1 was arrested and his Mobile has been seized. Now, nothing is required to be seized from the present applicants. There are no

allegations by the informant that the applicants had misbehaved with her in any manner. The delay in lodging the FIR whether has been properly explained or not, would be the point required to be dealt with by the trial Court at the end of the trial. But the fact is required to be taken note of, though all these things were happening and still in respect of incident dated 26th May 2021 she did not disclose those acts to her parents but gave false reasons as to why she had tried to burn herself. The entire charge-sheet which has been produced on record, does not contain documents of her treatment with Latur hospital. Though the witness list gives name of doctor i.e. Doctor Vitthal Lahane from Lahane Hospital, Latur, only discharge card has been collected. Naturally, informant has given a different history than the real one which she now wants to convey. It also appears that Doctor Lahane had not treated the girl as medico legal case, otherwise that would have been informed by him to the local Police. The charge-sheet also does not contain those alleged obscene photographs though it appears that the IP address has been traced out, may be about the device which was used for uploading the photographs. What was transpired with the fake account, is not clear from the charge-sheet. The statements of

the witnesses would absolutely show that they were not knowing anything till it was lastly disclosed by the informant.

7. Now coming to the point that the applicants have been shown as absconding and the general diary entries, it is to be noted that the same are the only entries and those are not supported with the statements of any person with whom the concerned officer has made inquiry about the whereabouts of the applicants. The Investigating Officer has not explained as to why he had not taken the recourse to Section 82 and 83 of the Code of Criminal Procedure. Merely because the sixty days period was coming to an end in respect of one of the co-accused, it does not justify him in not resorting to the steps under Section 82 and 83 of the Code of Criminal Procedure. It cannot be said that the applicants were absconding. Now, in view of the fact that that the investigation is complete, and the accused were not absconding, nothing is required to be recovered from them, they deserve to be released under Section 438 of the Code of Criminal Procedure. This Court had granted interim protection to the applicants, which deserves to be confirmed, but by imposing certain conditions. Hence the following order:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicants by this Court by order dated 15th December 2021 stands confirmed. It is clarified that in the event of arrest of applicant No.1 – Shivraj Pandurang Shinde and applicant No.2 – Balaji Sadashiv Wadje, in connection with Crime No.162 of 2021 registered with Loha Police Station, District-Nanded for the offence punishable under Sections 534, 354-A, 354-D, 506 read with Section 34 of the Indian Penal Code and under Sections 8, 12, 17 of the Protection of Children from Sexual Offences Act and under Section 66 (c) of the Information Technology (Amendment) Act 2020, they be released on bail on PR Bond of Rs.20,000/- each with one or more sureties in the like amount, if already not released.
- iii) Both the Applicants shall remain present before the Investigating Officer on every Saturday between 10.00 a.m. to 12.00 noon till filing of the charge-sheet and co-operate with the investigation.

- iv) Applicants shall not tamper with the evidence of the prosecution in any manner.
- v) Applicants shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]