

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

ANTICIPATORY BAIL APPLICATION NO.1539 OF 2021

SHUBHAM DNYANESHWAR BADHE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Swapnil Joshi, Advocate h/f J.P. Legal Associates, for the applicant

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

Mr. C.V. Bodkhe, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 03rd MARCH, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.406/2021 dated 19.11.2021 registered with Khultabad Police Station, Dist. Aurangabad, for the offence punishable under Section 354, 452 of the Indian Penal Code, 1860 and under Section 8, 12 of the Protection of Children from Sexual Offence Act, 2012.

2 Heard learned Advocate Mr. Swapnil Joshi holding for J.P. Legal Associates for the applicant, learned APP Mr. V.M. Kagne for the respondent No.1 and learned Advocate Mr. C.V. Bodkhe for the respondent No.2. In

order to cut short it can be said that they have argued in support of their respective contentions.

3 Before dealing with the application on merits, a fact is required to be taken a note of is that this Court had granted interim protection to the applicant by order dated 15.12.2021. The Investigating Officer has not arrested the accused till today; yet, filed the charge sheet on 16.01.2022. Filing of the charge sheet indicates that the investigation is complete. If he was in need of the custody of the applicant, then, he would have waited. Another fact to be noted is that the Investigating Officer had not taken any steps under Section 82 of the Code of Criminal Procedure against the present applicant and has not filed the charge sheet, which is usually referred as under Section 299 of the Code of Criminal Procedure. Under this circumstance, the custody of the applicant appears to be not required for the purpose of investigation.

4 Perusal of the First Information Report would show that it has been lodged by mother of the minor child. The minor is stated to be 16 years old girl. She has stated that the incident has taken place on 05.11.2021, however, the First Information Report has been lodged on 19.11.2021. The delay has not been explained at all by the informant. It is also to be noted that the informant states that she was knowing the applicant and they used

to talk with each other. Informant is aged 35 whereas applicant is aged 21. It has been boldly stated by the applicant that he is in relations with the informant. However, those statements appeared to be restricted to talking, however, as regards the date of incident is concerned, she states that she was in the house at about 12.00 a.m. on 05.11.2021. She and her son were sleeping, whereas the daughter was studying. The accused went to the house and by knocking the door, when asked as to who is there, the applicant told his name. The informant opened the door and by saying that he has to say something to her, he entered the house, though she was resisting. He directly went to the spot where the girl was studying and caught hold of her hand and by saying that he wants to marry her and hug the daughter. When the informant told that she is yet very young, then the applicant was separated by her from the daughter. He then caught hold of the hand of the informant and outraged her modesty. There appears to be some substance in the say of the applicant that the delay has been committed in lodging the report and it has not been explained. That can be explained even later and how to assess that evidence would be the task for the Trial Judge.

5 No doubt, the offence that is stated to be serious in nature; yet it does not require custodial interrogation. As aforesaid, even the charge sheet is filed, which is the indication that the custodial interrogation is not

required. Another fact to be noted is that in their statements the girl and the son of the informant have stated that since their father was not present in the house and he came only on 19.11.2021, they lodged the report on that date, and, therefore, as aforesaid, how to assess the alleged explanation for the delay is the task for the Trial Court. Except the persons in the house there is no other person who is to be examined in this case. Therefore, the interim protection granted earlier deserves to be confirmed. Accordingly, it is confirmed. Hence, following order.

ORDER

1 Application stands allowed.

2 Interim protection granted by this Court earlier to applicant vide order dated 15.12.2021, 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. Shubham Dnyaneshwar Badhe, in connection with Crime No.406/2021 dated 19.11.2021 registered with Khultabad Police Station, Dist. Aurangabad, for the offence punishable under Section 354, 452 of the Indian Penal Code, 1860 and under Section 8, 12 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 more sureties in the

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 He shall co-operate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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