

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1599 OF 2021

SANJAY @ SANJAYDAS S/O TULSHIDAS VAISHNAV
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. B. G. Sagade, Advocate for the applicant.
Mr. N. T. Bhagat, APP for respondent No.1 – State.
Mr. Sohail Subhedar, Advocate for respondent No.2. (Appointed)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25.01.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.416 of 2021 registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable under Section 354 of Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the “POCSO Act”).

2. Heard learned Advocate Mr. B. G. Sagade for the applicant, learned APP Mr. N. T. Bhagat for respondent No.1 – State and learned Advocate Mr. Sohail Subhedar for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the FIR has been lodged, as the

present applicant had not gone to attend the meeting that was called by the Sarpanch at the behest of the informant. The applicant has been falsely implicated. There is inordinate delay of 4 days in lodging the report. It is the outcome of the political rivalry. There were two panels in the elections those were held on 15.01.2021 in Grampanchayat, Shirodi. The applicant was contesting from one panel. He was defeated. The applicant along with others had filed an application before the Collector, Aurangabad on 10.02.2021 seeking disqualification of the elected Grampanchayat members on account of encroachment made by them on the government property. Those elected members were insisting that the applicant should withdraw the said proceeding, but he refused and, therefore, with the help of the elected members, the informant has booked the applicant in false case. The applicant has produced on record documents supporting his contention that he was contesting the election. He came to be defeated and there is political rivalry. Copy of the application before the Collector has also been filed. The applicant is ready to abide by the terms of the bail.

4. The application has been strongly opposed by the learned APP stating that serious allegations have been made against the present applicant. There is nothing produced on record to show that the informant has any political connection to the rival group of the

applicant. The custodial interrogation is also necessary, however, seriousness of the offence is the main ground to which extraordinary powers of this Court need not be exercised.

5. Learned Advocate Mr. Sohail Subhedar, who came to be appointed as *amicus curiae* to represent the cause of respondent No.2 – informant, submitted that he has instructions from the informant to state that she has no political connections. Disadvantage has been taken of the simpleton nature of the minor daughter of the informant, who is presently aged 15. In fact, this incident was witnessed by the son of the informant, who is aged 10. Since he was present the further incident has not taken place, otherwise a more serious offence would have been committed. The applicant does not deserve any sympathy.

6. Perusal of the FIR would show that the informant has 3 children. Victim is the eldest aged 15. Informant is an agriculturist and her family members take vegetables in their field. She send her children for selling those vegetables and accordingly, on 25.11.2021, she had prepared bunch of fenugreek vegetable and sent her daughter and son. They returned around 8.00 p.m. and she could notice that the girl is quiet. Son told that when they were selling vegetable near the house of Police Patil, the present applicant came to purchase the vegetable. After asking

for the price, he went home and again came with amount. He purchased three bunches and dragged victim in the nearby galli in darkness. He was pressing her breasts. When the son went and asked him as to what he is doing, thereafter, the applicant left the victim, and they came back. The informant has also stated that after she asked daughter about the said incident, she also told the same story and, therefore, the informant along with her husband went to the house of the present applicant. Present applicant's wife told them that the present applicant has consumed liquor and, therefore, they should come next day morning. The informant and her husband went to their home at about 8.00 a.m. on the next day, but till then the present applicant had left home. The wife of the present applicant told informant that they should meet Sarpanch. In the meantime, after informant had disclosed incident to her brother-in-law, he came down to the village and all of them went to the Sarpanch. Sarpanch had called meeting to which the applicant was called, but the applicant did not come. Those persons told that the applicant has done such incidents in the past also and, therefore, the informant should lodge the report.

7. The contents of the FIR do not show any political angle to the same. The conduct of the informant in visiting applicant's house along with husband cannot be said to be unnatural as such incidents take

place especially in rural area. The applicant has not come with the case that there was previous enmity between him and the informant's family. Therefore, at this *prima facie* stage, we cannot say that the applicant is falsely implicated. There is nothing on record to connect the informant with the election that had taken place. Furthermore, the election had taken place on 15.01.2021. The applicant was already defeated. Whatever application he has made before the Collector has been kept pending by him for so many months for which the informant is not party and the incident has taken place about 10 months thereafter. When no element of *mala fides* can be seen, and taking into consideration the conduct, seriousness of the offence, this is not a fit case where the extraordinary powers of this Court should be exercised. Hence, the application stands rejected.

8. Fees of the appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services, Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

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