

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2874 OF 2021

Aarbaj @ Saqlain Mohammad Hanif Shaikh ..Applicant
V/s.
The State of Maharashtra & Anr. ..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 3052 OF 2021**

Sabin Gulab Mohammad Asharafi and Ors. ..Applicants
V/s.
The State of Maharashtra ..Respondent

Ms. Anjali Patil, for the Applicants.
Mr. Y.Y.Dabke, APP for the Respondent/State.
Ms. Priyanka Chavan, for Respondent No.2 in ABA/2874/2021.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 27 JANUARY 2022
PRONOUNCED ON : 31 JANUARY 2022
(Through Video Conferencing)**

P.C.

. Both these Applications, seeking anticipatory bail arise out of Crime No.400/2021 of Karad Taluka Police Station, District Satara under Section 363, 376(2)(n) of IPC and Section 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO

Act) and Section 9, 10 and 11 of the Prohibition of Child Marriage Act, 2005.

2. The prosecution case as disclosed from the complaint lodged by mother of the victim – girl is that the victim who was then aged about 16 years and 11 months was staying with her maternal uncle at Sion Dharavi, Mumbai and was studying in 12th standard. On account of the classes being conducted online, the victim had gone to her native place at Wing, Taluka Karad, District Satara on 11 August 2021. On 19 August 2021, at about 11.00 a.m., the victim went missing from her house and hence her mother lodged missing complaint, on the basis of which the offence at Crime No.400/2021 was registered under Section 363 of IPC against unknown persons. The victim was found and was brought to Karad Taluka Police Station on 7 September 2021. After her statement came to be recorded, the offences under Section 376 of IPC as well as under the POCSO Act and Prohibition of Child Marriage Act were added.

3. It was disclosed during the investigation that the Applicant – Accused Aarbaj @ Saqlain had married with the victim girl under a declaration of marriage dated 4 September 2021. The Applicant Sabir is the neighbour, Mohammad Zubair is the brother while the Applicant Mohammad Shahrukh is the brother-in-law of the main Accused Aarbaj.

4. I have heard the learned counsel for the Applicants, the learned APP and the learned counsel for the Respondent – Complainant. Perused record.

5. It is submitted by the learned counsel for the Applicants that the date of birth of the victim is shown to be 31 August 2003 in the Aadhar Card and the PAN Card and therefore, on 4 September 2021 i.e. at the time of marriage the victim had attained majority. It is submitted that the prosecution case that there is fabrication and manipulation of the Aadhar Card by the Applicants is not correct in as much as the affidavit in reply filed by the Investigating Officer shows that even according to the Complainant, the date of birth of the victim while preparing Aadhar Card was wrongly mentioned as 31 August 2003. It is thus submitted that there is no manipulation by the Applicants. It is submitted that the victim having attained majority and the age of understanding and consent, had voluntarily accompanied the Accused Aarbaj @ Saqlain and there is a marriage certificate / *Nikahnama* duly recorded after which both of them are staying as husband and wife. It is submitted that without admitting the allegations about enticement or forcible marriage and sexual abuse, the victim has now returned to her parents and is staying at Karad while the Applicants are residents of Mumbai. It is therefore submitted that there is no possibility of the Applicants interfering with the investigation or the witnesses or the victim. It is submitted that all the relevant documents have already been seized by the

Investigating Officer and further custodial interrogation of the Applicants is not necessary. It is submitted that there is no evidence that the victim was physically harmed in any way. The learned counsel for the Applicants pointed out order dated 27 November 2018 passed by this Court in ABA No.2397/2018 in order to submit that in similar circumstances, this Court has granted anticipatory bail.

6. Learned APP assisted by the learned counsel for the Respondent – Complainant, submitted that the date of birth of the victim as per the birth certificate issued by Panvel City Municipal Corporation is 31 August 2004 and thus, the victim was a minor on the date of incident. It is submitted that the investigation has disclosed that the PAN Card was sought to be obtained after the incident and even after the victim had returned to her parents on 29 November 2021, she again went missing on 16 December 2021 and on inquiry by the Complainant, it was revealed that she was staying with the Applicant Aarbaj @ Saqlain at Nagpur. It is submitted that thus, there is every possibility of the Applicants influencing the investigation and the victim and for proper investigation, the custody of the Applicants is necessary.

7. I have given my anxious consideration to the rival circumstances and the submissions made. *Prima facie*, it appears that even according to the victim she was born on 31 August 2003

at D-1-12, Utkarsh CHS, Sector 11, Khanda Colony, Panvel, Raigad and the birth certificate issued by the Panvel City Municipal Corporation shows the date of birth of the victim girl as 31 August 2004. It is true that the Aadhar Card mentions the date as 31 August 2003. However, it is necessary to note that the Supreme Court in the case of *Jernail Singh Vs. State of Haryana*¹ has held that even where the child is a victim, the age needs to be determined in accordance with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, framed under the Juvenile Justice (Care and Protection of Children) Act, 2000. Now Rule 12 has been incorporated as Section 94(2)(ii) of the Juvenile Justice (Care and Protection of Children) Act, 2015. Further, it can be seen that according to the Investigating Officer, the PAN Card has been obtained after the incident. At least, *prima facie*, it is not shown at this stage as to how the victim can have a PAN Card when she was studying and had no source of income as such. The reply filed by the Investigating Officer also shows that there was an OTP received on the mobile phone of the father of the victim on 31 August 2021 and on 1 September 2021 pertaining to the Aadhar Card of the victim ending 5530. Thus, it appears that there was an attempt to manipulate or change the record.

8. There is a declaration of marriage dated 4 September 2021 and *Nikahnama* which bears signature of the parties. The

¹ (2013) 7 SCC 263

Applicants in ABA No.3052/2021 appear as witnesses on the *Nikahnama*. Thus, *prima facie*, their role in the entire incident cannot be ruled out, at this stage. Although, the victim has now returned and is staying with her parents, the reply filed by the Investigating Officer shows that even during the pendency of the Applications, the victim had again gone missing on 16 December 2021 and was allegedly staying at Nagpur with the Applicant Aarbaj @ Saqlain. In the given circumstances, no reliance can be placed on the affidavit filed by the victim and in a given case, this may also amount to influencing the investigation and the witnesses. In my considered view, the aspect of the manipulation of the Aadhar Card and obtaining of the PAN Card and all other aspects of the matter, need to be properly investigated, for which the custodial interrogation of the Applicants is necessary.

9. A perusal of the order dated 27 November 2018 in ABA No.2397/2018 shows that on the basis of the S.S.C. / H.S.C. record, the date of birth of the victim was found to be 23 June 2000 and had completed 18 years of age. Thus, reliance placed on the said order is misplaced.

10. In the result, the Criminal Applications are hereby rejected. The observations herein are only for the purpose of deciding the Application for Anticipatory Bail and the learned Sessions Judge

shall not be bound by the same in any Application, at the subsequent stage for regular bail, if any.

C.V. BHADANG, J.