

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

ANTICIPATORY BAIL APPLICATION NO. 2338 OF 2022

Buva @ Kondiram Shankar Akhade ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2339 OF 2022**

Dattatraya Maruti Bavalekar ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. A.P.Mundargi Sr. Counsel a/w. Aarif Ali Ali for the Applicant in ABA/2339/2022.

Mr. Ganesh Gole for the Applicant in ABA/2338/2022.

Mrs.G.P.Mulekar, APP for the State.

PSI A.M.Bidri from Mahabaleshwar Police Stn.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 26th AUGUST, 2022.**

P.C.

1. These applications under Section 438 Cr.P.C. are filed by the aforesaid Applicants apprehending their arrest in Crime No.87 of 2021 registered at Mahabaleshwar Police Station for offences under Section 201, 218, 221, 120B, 376, 504 r/w. 34 of Indian Penal Code, and Section 4, 6, 17, 19, 20 and 21 of Protection of Children

from Sexual Offences Act, 2012 and Section 80, 81 and 87 of Juvenile Justice Act, Section 3(3), 4, 5 and 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

2. Heard Shri Mundargi, learned Senior Counsel for the Applicant Dattatraya in ABA/2339/2022, and Shri Gole for the Applicant Kondiram in ABA2238/2022, and Mrs. G.P.Mulekar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The victim a minor girl, was pregnant, and upon inquiry she narrated that she was friendly with one boy by name Aba @ Sagar Hanmant Gaikwad. Said Aba @ Sagar, and that another person by name Ashutosh Mohan Biraman had allegedly subjected her to rape. The pregnancy was not terminated and the minor girl gave birth to a child. It is alleged that the mother of the victim informed the son of the Complainant about birth of the child. He suggested that the child should be given in adoption. He further informed her that Chaurasia Family was issueless and he could talk to them if she was willing to give the child in adoption. It is alleged that the child was given in adoption to Chaurasia Family without following the procedure prescribed under the Juvenile Justice Act.

4. Pursuant to the FIR lodged by the mother of the minor victim, Crime No.87 came to be registered on 22.09.2021 against the said two boys who had subjected the minor girl to rape, as well as against the adoptive parents, the lawyer, the notary, the priest, sons and the staff of the Applicant Dattatraya for abetting the offences. It is stated that subsequently the mother and grandmother of the victim girl have also been arrayed as accused nos.7 and 14. Upon completion of investigation, chargesheet has been filed against total 14 persons.

5. The records reveal that while the case is pending before the Special Court, Satara, one Kumar Shinde filed a private complaint before the Special Court (POCSO), Satara. Relying upon the statements of the adoptive parents and uncle, recorded in the course of interrogation in Crime No. 87 of 2021, he alleged that these Applicants were also involved in commission of the said crime. Based on the affidavit in support of the Complainant, Learned Special Judge, Satara, passed an order under Section 15(3) of Cr.P.C and ordered investigation of the said crime. Pursuant to the said order, crime No. 33 of 2022 has been registered at Mahabaleshwar Police Station against these Applicants for committing the offence

as stated above.

6. The Applicants are not involved in committing offence of rape. The only allegation against the Applicant Dattatraya is that he too had assisted in giving the child in adoption. The crime under the provisions of Juvenile Justice Act was investigated and chargesheet has been filed. The second complaint is based on the same set of facts and in respect of the same incident. Even if the Applicant is not arrayed as an accused in C.R.No. 87 of 2021 Section 319 Cr.P.C. confers power on the Court to proceed against any person who is not an accused in a case before it, provided there is prima facie material to proceed against him. Learned Special Judge has not taken recourse to this provision, instead ordered investigation under Section 156(3) Cr.P.C., when in fact the crime was already investigated and chargesheet has been filed. Prima facie, the procedure adopted is not in accordance with law. Moreover, the allegation leveled against the Applicants do not justify custodial interrogation.

7. In the aforesaid facts and circumstances, in my considered view, this is a fit case for grant of pre-arrest bail. Hence the order:-

(i) In the event of arrest of the Applicants in Crime No.87 of 2021 registered at Mahabaleshwar Police Station, the Applicants are ordered to be released on bail on furnishing PR bond of Rs.20,000/- (Rupees Twenty Thousand Only) each with one or two sureties in the like amount;

(ii) The Applicants shall report to the Investigating Officer if required for the purpose of investigation and interrogation.

(iii) The Applicant shall provide their permanent as well as temporary address, if any, and their contact details to the Investigating Officer.

(iv) The Applicants shall not change their residential address without prior intimation to the Investigation Officer.

(ANUJA PRABHUDESSAI, J.)