

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

ANTICIPATORY BAIL APPLICATION NO.2879 OF 2021

Urmila Prakash Bhatia Applicant
Versus
The State of Maharashtra Respondent

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WITH
INTERIM APPLICATION NO.2933 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.2879 OF 2021

Ms. Sana Khan, Advocate a/w. Anuj Jhaveri, for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.
Ms. Swapana P. Kode, Advocate for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th JANUARY, 2022
[THROUGH VIDEO CONFERENCING]

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.767/2021 dated 11.11.2021 registered at Samata Nagar Police Station, Mumbai under Sections 354, 323, 504, 506 of the Indian Penal Code, under Sections 8 and 12 of the Protection of Children From Sexual

Offences Act, 2012 (for short, 'POCSO Act') and under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'Juvenile Justice Act').

2. Heard Ms. Sana Khan, learned counsel for the Applicant, Mr. Ajay Patil, learned APP for the State and Ms. Swapana Kode, learned counsel for the Intervenor.

3. At the outset, it must be noted that the predecessor of this Court vide order dated 17.12.2021 had suggested mediation in the matter. The matter was adjourned to 20.1.2022 with interim protection to the applicant.

4. Today, the matter was circulated before this Court because the Mediator, who was appointed, had expressed his inability to act as a Mediator because of his personal reasons. Therefore, I have considered the matter afresh when it was placed before me. After going through the FIR lodged by the victim, I am of the opinion that there is no question of mediation in this matter because the offences alleged are under the POCSO Act and under the Juvenile Justice Act. The

FIR is lodged by the victim, who was 17 years and 1 month of the age, at the time of lodging of the FIR and hence she was a minor. Therefore, there was no question of mediation considering seriousness of the allegations.

5. Therefore, I have heard the parties on merits of the matter. All the parties argued the matter on merits of the matter. I have also heard learned APP and I have perused the investigation papers.

6. The FIR is lodged by the victim herself. She has stated that the applicant is the informant's step-mother. The applicant got married with the informant's father on 28.11.2014. The applicant had two daughters from her earlier marriage. The informant herself had a sister, who was not residing with the informant and her father. The FIR mentions that since the year 2017, the applicant started harassing the informant. For that purpose, the informant as well as the informant's father had made on-line complaints. She has stated in her FIR that since 2017, the applicant started hurling obscene abuses towards the informant and started causing

mental harassment. More serious allegations are regarding the instances in June, 2018 when the informant's father had gone abroad for his work. The FIR mentions that on three to four occasions, the applicant had called her to her bed-room. She had touched the informant's breasts and private parts inappropriately. At that time, as the informant's father was abroad, the informant did not tell it to anybody. The FIR thereafter goes on to mention the cruel treatment meted out to her by the applicant. On one occasion, the informant was locked in a room. She used to be given stale food. She was made to stand outside the house. When the informant had suffered from Corona, that time she was not looked after. The applicant used to read her WhatsApp messages and chats with her friends. She used to hurl obscene abuses and used to threaten her. The important documents of the informant were taken by the applicant and were not given back to the informant. The informant, therefore, was under constant mental pressure. All this started affecting her mental health as she was having constant fear. The FIR mentions the

objectionable words used by the applicant against the informant. The informant's father then made a complaint by using a child help-line. On 13.8.2021, a Member of the Child Welfare Committee approached the informant and made enquiries with her. At that time, when taken in confidence, the informant told her about the sexual harassment which she had to face. According to the informant, the applicant had used pepper spray on her on some occasions and she was beaten with a broom and a hammer. On these allegations, the FIR is lodged.

7. Learned counsel for the applicant submitted that there is only one paragraph in the FIR regarding sexual harassment at the hands of the applicant and that was also in reference to the instances which had taken place in June 2018. Thus, there was delay in coming out with such allegations.

8. She submitted that there are proceedings pending between the applicant's husband and the applicant. The applicant's husband is using the informant to put pressure on the applicant. The informant was tutored by the applicant's

husband.

9. Learned counsel for the applicant further submitted that there is also dispute about ownership of the flat between husband and wife, and to get out of the difficult situation, the informant is made to lodge false complaint against the applicant.

10. Learned counsel for the first informant submitted that the first informant had made many complaints against the applicant in the past. She submitted that considering the constant harassment and also considering the informant's tender age, it was not expected that the informant would have rushed to the police to make complaint against the applicant.

11. Learned APP submitted on instructions of the investigating officer that apart from the sections which are applied at present, the investigating agency also intends to apply Section 10 of the POCSO Act.

12. I have considered these submissions. At this stage, even assuming that there is some matrimonial serious dispute

between the applicant and her husband, the question still remains about the serious allegations made in the FIR. At this stage, it is not possible to record that these allegations made in the FIR are false. Reading of the FIR shows the manner of cruel treatment meted out to the first informant.

13. The offence of 'sexual assault' is defined under Section 7 of the POCSO Act, which reads thus:

“7. Sexual assault.-- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

14. Section 9 of the POCSO Act provides for aggravated sexual assault. Sub-sections (l) & (n) of Section 9 mention that whoever commits sexual assault on the child more than once or repeatedly; or whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship

with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child, is said to commit aggravated sexual assault. The punishment is provided under Section 10, which is not less than five years, but, which may extend to seven years.

15. Apart from all these sections, the provisions of Section 75 of the Juvenile Justice Act are also important, which provides for punishment for cruelty to child, which reads thus:

“75. Punishment for cruelty to child.-- Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such

cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

16. The allegations in the FIR squarely cover all these sections. Therefore, all these offences are squarely applied. It is not possible to hold at this stage that the allegations are deliberately made falsely by the first informant. The provisions of both these Acts will have to be sympathetically considered towards the cause of the victim. She was around 13 years of age when the offence of aggravated sexual assault was committed.

17. I also do not find substance in the argument that the allegations are made belatedly. For that purpose it is necessary to understand the plight of the child, who was under the control of the applicant. Therefore, it is also understandable that the informant made her grievance only after she was taken in confidence by the Member of the Child Welfare Committee.

18. The allegations in the FIR show that the informant was treated with extreme cruelty over a large period of time causing permanent fear in her mind.

19. Considering the gravity of the offence, no case for grant of anticipatory bail is made out. The application is rejected. In view of disposal of main application, nothing survives in IA No.2933/2021 and same also stands disposed of. However, since by the previous order dated 17.12.2021 the applicant was protected by an interim order till 20.1.2022, the same shall continue till 20.1.2022.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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