

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2742 OF 2022

Sandeep Manohar Singh] .. Applicant

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.P.R. Dave, for the Applicant.

Mr.A. R. Kapadnis, APP for the State.

API Bodke, Miraroad Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 7th OCTOBER, 2022.

P.C.

1] The Applicant is apprehending his arrest in CR No.330/2022 registered with Mira Road Police Station which accuse him of the offence under Section 354, 354D IPC and Section 8 and 12 of the POCSO Act.

2] The complaint is filed by the sister of the victim girl who has stated that her younger sister aged 16 years is residing with her and taking education in class 10th. The victim girl informed the complainant on 10.08.2022 that on 09.08.2022, while she was returning home alongwith her brother, one boy who was riding on his scooter touched her on her back and this is construed as outraging her modesty. It is also stated that this boy was stalking her for last one week, and when the boy was stopped and questioned as to why he is teasing her, he left the place. It is, in the wake of this accusation, the Applicant is apprehending his arrest.

3] The learned counsel for the Applicant has invited my attention to another FIR filed by the Applicant himself which is registered as CR No.331/2022 on 10.08.2022 which invoke Section 323, 324, 504, 506, 143, 147, 149 of the Indian Penal Code. This complaint is lodged against the brother of the informant, one Monu and some 10-15 persons.

On reading of the said complaint it is seen that it arises out of the same incident which is complained in CR No.330/2022 and the Applicant who is complainant in the cross CR has alleged that he was assaulted by Ankit, Monu and 10-15 people by means of bat and bamboo, which has resulted in injuries to him. The Applicant has placed on record admission papers which reflect that he was hospitalized for about 16 days.

The submission of the learned APP is that, he ran away from the hospital in the midst of the treatment. In any case, it cannot be disputed that the Applicant had sustained injuries.

The statement of the victim girl is also recorded which corroborate the version of the complainant that she was tapped on her back by the Applicant.

4] The subject CR accuse the Applicant of Section 8 and 12 of the POCSO Act. However, on perusal of the said provision, which pertain to sexual assault as defined in Section 7, I do not think that offence under Section 8 of the POCSO Act is made out. In order to invite punishment for sexual harassment, which has been defined under Section 12 of the POCSO Act, necessary ingredient is that a person is said to commit sexual harassment when such person commits any of the acts specified in the said Section with 'sexual intent'.

Prima facie even these ingredients are not made out. Even assuming that it is clearly evident, it would not attract sub clause (4). In any case, prosecution has already invoked Section 354D which prescribe punishment for stalking.

In the wake of above, in absence of sexual intent being attributed to the Applicant in the commission of the act, prima-facie offence under Section 8 and 12 of the POCSO is not made out.

5] In the wake of circumstances narrated above, with the cross FIR being filed by the Applicant on the ground that, he himself was assaulted by the brother of the complainant and by way of afterthought the Applicant has filed the complaint, in my considered opinion, he deserve protection from arrest.

Hence, the following order :

ORDER

(a) Application is allowed.

(b) In the event of arrest in connection with C.R.No.330/2022 registered with Mira Road Police Station, the applicant Sandeep Manohar Singh shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall report to the Investigating Officer from 12.10.2022 to 14.10.2022 between 3.00 p.m. to 5.00 p.m. and thereafter, as and when called for.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

[BHARATI DANGRE, J]