

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.9 of 2022

Mohammad Ashraf s/o Mohammad Yusuf

vs.

The State of Maharashtra, through PSO Panchpaoli, District Nagpur & another

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.G. Hunge, Advocate for the Applicant.
Mr. V.A. Thakare, A.P.P. for Non-Applicant No.1/State.
Ms. A.P. Pankule, Advocate for Non-Applicant No.2.

CORAM : SURENDRA P. TAVADE, J.
DATE : 27th JANUARY, 2022.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

02] Heard the learned Counsel for the applicant, the learned A.P.P. for the State and the learned Counsel for non-applicant No.2.

03] Perused the application and the F.I.R. The applicant is facing charge under Sections 376(2)(n), 323, 325, 354-A, 504 and 506 of Indian Penal Code and Sections 4, 8, 10 and 12 of the Protection of Children from Sexuale Offences Act (POCSO).

04] The F.I.R. was lodged by one Fatima Kausar Abdul Rafique Khan Chisti, who is the grandmother of the victim. It is alleged in the F.I.R. that in the night of 9th November, 2021 at about 02:00 a.m., the applicant sexually

assaulted the minor victim. The said incident was disclosed by the victim to her mother as well as grandmother. On seeking explanation of the applicant on the incident, the applicant got annoyed and assaulted the informant and her daughter. Thereafter, F.I.R. came to be lodged. On the basis of the F.I.R.

05] The learned Counsel for the applicant submits that the incident alleged by the informant in the F.I.R. had not taken place at all. It is contended that due to misunderstanding, the F.I.R. came to be lodged. The learned Counsel for the applicant has invited my attention to the affidavit filed by the informant, wherein she has contended that due to some misunderstanding between herself and the applicant, F.I.R. came to be filed. She has also stated in the affidavit that the applicant is not involved in the assault on her and her grand-daughter. It is contended that the incident had taken place in the month of November, 2021 and the investigation is over and, therefore, the custodial interrogation of the applicant is not required. Therefore, he prays that the applicant be released on pre-arrest bail.

06] The notice of this application was issued to the non-applicants. The learned A.P.P. filed reply as well as additional reply. It is contended that there are specific allegations against the applicant of outraging the modesty of the victim, who was aged about 12-13 years. Thereafter, there was an incident of assault on the informant, wherein she sustained grievous injury. It is contended that the statement of the victim and others are recorded under

Section 164 of the Code of Criminal Procedure. The victim has stickup to the version given by the informant in the F.I.R. There are specific allegations are made against the applicant in the statement of the victim recorded under Section 164 of Cr.P.C. It is also contended that during the course of investigation, Section 376(2)(n) of the Indian Penal Code and Sections 4 and 10 of the POCSO Act are added. Since, the offence is serious in nature, custodial interrogation of the applicant is much required. Therefore, it is prayed that the application be rejected.

07] Perused the F.I.R. It was lodged by grandmother of the victim, wherein she has made specific allegations against the applicant on the basis of information given by the victim. It is alleged in the F.I.R. that the applicant assaulted the informant and she sustained grievous injury.

08] In view of the said fact, the Investigating Officer has referred the victim to the J.M.F.C. for recording her statement under Section 164 of Cr.P.C. On perusal of the said statement, it appears that there are specific allegations against the applicant, which *prima facie* show that the applicant has outraged the modesty of step-daughter at the wee hours of night. It also appears from the statement that the informant has sustained grievous hurt to her finger of the hand.

09] On this fact, the learned Counsel for the applicant submits that the informant has filed an affidavit, wherein she has given explanation for lodging of F.I.R. The

said explanation cannot be accepted at this stage. At the most, on the basis of the same, the applicant may file application for quashing of F.I.R. But, in view of the statement of the victim, it can be said that the offence is *prima facie* made out against the applicant, which is under Sections, 4, 8, 10 and 12 of the POCSO Act. Therefore, in my opinion, the applicant is not entitled for the relief of pre-arrest bail. Hence I pass the following order :

ORDER

- The application is rejected.

JUDGE

**sandesh*