

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.303 OF 2023

**SANGITA W/O. SHESHRAO @ SHASHIKANT KUNDHARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Kayyum Najir Shaikh, Advocate for the applicant
Mrs. R. P. Gaur, APP for the respondent/State
Mr. K. N. Shermale, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 4th AUGUST, 2023

P.C. :-

1. Applicant apprehends arrest in connection with Crime No. 795/2021 registered with Newasa Police Station, Tal. Newasa, Dist. Ahmednagar for the offences punishable under Sections 363, 366, 376(2) (n), 327, 107, 109, 201 r/w 34 of I.P.C. and Sections 3, 4, 17 and 18 of POCSO Act.

2. The first information report came to be lodged at the instance of the father of the victim wherein it is stated that on 18th October, 2021 she was kidnapped by unknown person. Later on it was revealed that she was taken away by the son of present applicant. On the basis of statement of the victim offence under Section 376 of IPC and POCSO Act were registered.

3. Learned counsel for the applicant states that on the basis of material evidence on record it cannot be held that the applicant has abetted the commission of offence under Section 376 of IPC and under the POCSO Act. As far as the allegation against her in respect of she having taken away the ornaments of the victim is concerned, it is contended that the first statement recorded of the victim there is no such statement made by her. According to him the subsequent statement as well as the statement under Section 164 of Cr.P.C. is an after thought. He therefore submits that there is no evidence to connect her with the crime.

4. Learned APP opposed the application by relying upon the statements recorded during the course of investigation. According to her the applicant is the prime victim and that it was her duty to inform the police if her son had brought a minor girl in the house. It is also contended that for recovery of ornaments custody of applicant is necessary.

5. Learned counsel for the victim also opposed the application by submitting that pursuant to the directions of this Court and observations made against the Investigating Officer, statement under Section 164 of Cr.P.C. came to be recorded. Thus, according to him the

said statement is reliable and sufficiently indicates the involvement of the applicant in the crime at least to the extend of she having taken away the gold ornaments of the victim. According to him for the purpose of seizure of said ornaments, custodial interrogation of the applicant is necessary. He also drew attention to the Court two crimes are registered against the family members of the applicant. It is submitted that both parties reside in the same locality and that the victim and her family is being pressurized and harassed by them. Thus, this is not a case for grant of anticipatory bail.

6. Perusal of the record indicates that the charge-sheet has been filed in this case after completion of investigation. The perusal of the statement of the victim recorded for the first time or even before the learned JMFC, it cannot be inferred that present applicant can be said to have abetted the commission of crime of rape which is alleged against her son. The only allegation against her is that she has took ornaments of the victim. Though in this regard submission is made by the learned counsel for the victim that the pursuant to directions of this Court the statement under Section 164 of Cr.P.C. came to be recorded however, the perusal of the police papers indicates that even prior to the recording of statement under Section 164 of Cr.P.C. supplementary statement of the victim was recorded, to that effect. In that statement it was claimed by

her that the applicant herein snatched the ornaments. Pertinently the first statement of victim does not make any reference about the same. Apart from this perusal of the report lodged by the father of victim also nowhere makes mention about girl wearing any ornaments at the time when she was kidnapped by the unknown person on 18th October, 2021. Ordinarily, while lodging missing complaint reference is made about the apparel and things on person of victim. Here in this case as it was alleged that she was taken away by unknown person, a reference about her clothings and ornaments wore was essential. There is nothing on record to indicate that girl wore ornaments. At this stage suffice it to say that the statement is made by the victim to the effect of ornaments is belated and that too after she went in to the custody of the parents. Thus, the possibility of improvement is not ruled out. Thus, this is not case where custodial interrogation of applicant is necessary. Even otherwise after completion of investigation and filing of charge-sheet, there remains no force in the submission of prosecution or victim about custodial interrogation. Hence application is allowed in terms of interim order dated 3rd March, 2023.

(R. M. JOSHI, J.)

ssp