

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1352 OF 2023

BALASAHEB GOVIND RATHOD AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. A. R. Gaikwad  
APP for Respondent No. 1: Mr. V. S. Badakh  
Advocate for Respondent No. 2 : Mr. N. P. Chudiwal  
(appointed)

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CORAM : R.M. JOSHI, J  
DATE : NOVEMBER 02, 2023

**PER COURT :**

1. Applicants apprehend arrest in connection with Crime No. 130/2022 registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under Sections 363, 376(2)(n), 344, 346, 506, 34 of Indian Penal Code and Sections 4(2) and 8 of the Protection of Children from Sexual Offences Act.

2. On 04.04.2022 informant reported to the police about his grand daughter found missing from 31.03.2022. According to informant, parents of the girls are sugarcane cutting labourers and at the relevant time they had been to State of Karnataka. Informant before lodging report tried to search the girl with relatives

and since then she was not found, report came to be lodged to the police.

3. Learned Counsel for the Applicants submits that Applicant No. 1 is the father of co-accused against whom there is allegation that he had kidnapped the minor girl whereas Applicant No. 2 is their neighbour. It is submitted that the charge-sheet is filed after conclusion of investigation and from the said charge-sheet, there is no role made out against present Applicants of their involvement in the crime.

4. Learned APP and learned Counsel for victim opposed the said submissions. According to them, statement made by the victim girl before Magistrate is false but the same is made due to pressure exerted on her by police personnel. It is their contention that offence is under the provisions of POCSO Act and hence, this is not a fit case for grant of pre-arrest bail.

5. There is no dispute about the fact that the charge-sheet has been filed after conclusion of investigation. The date of incident on which girls went missing is 31.03.2022 whereas the report is lodged on

04.04.2022. The girl was brought back by police on 27.02.2023. The statement of girl recorded under Section 161 of CrPC makes allegations against co-accused of she being kidnapped by him and she was subjected to forcible physical relations. Allegations against Applicants is that they took her to Aurangabad and confined her there. The said statement is recorded on 28.02.2023. Thereafter, girl was produced before Magistrate for recording her statement under Section 164 CrPC. In the said statement she claims that she used to like co-accused and the her family members not agreeable for the said relationship. She further claimed that she forced the co-accused to took her away. She is also stated that she is going to marry him. In this statement, she does not make any allegations against present Applicants.

6. Since, it is argued on behalf of Victim that the statement made before Magistrate was due to fear exerted by police personnel, a specific query was made as to when father of victim met her after recording of the said statement, on instructions, it is informed to the Court that immediately after he met her. If this is

so, there is no justification that till 7.10.2023 no complaint is made to that extent. The complaint made after six months to claim that the statement made by her before the Magistrate is not at her own accord cannot be accepted at this stage.

7. Having regard to the statement made by the girl before Magistrate, this Court is of *prima faice* view that it could be a case of false implication of the present Applicants. Nothing is to be recovered at their instance. Hence, application is allowed by confirming interim order dated 18<sup>th</sup> August, 2023.

(R.M. JOSHI, J.)

Malani