

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

ANTICIPATORY BAIL APPLICATION NO. 820 OF 2023

Rajendra Balasaheb Sonawane ...Applicant

vs.

The State of Maharashtra and Anr. ...Respondents

Mr. Shailesh D. Chavan – Advocate for the Applicant.
Mr. A. R. Kapadnis – APP for the Respondent No. 1-State.
Ms. Snehal Tanaji Sornade – PSI – Wai Police Station.

CORAM : S. M. MODAK, J.
DATE : 28th MARCH, 2023

P. C. :-

1. After hearing the matter in the first half, this Court on merits was not inclined to grant bail and hence, learned Advocate for the Applicant sought time to take instructions.

2. In the afternoon session, learned Advocate for the Applicant submitted that he wants to go on with the matter and placed reliance on the following orders / judgments :-

- (i) Arnesh Kumar V/s. State of Bihar and Another¹
- (ii) Omkar Abasaheb Gaikwad V/s. The State of Maharashtra²
- (iii) Apporv Omkar Pande V/s. The State of Maharashtra³

1 (2014) 8 Supreme Court Cases 273

2 ABA (ST) No.4987 of 2020 : 25th November 2020 : Bombay High Court

3 ABA (ST) No.7308 of 2020 : 22nd December 2020 : Bombay High Court

3. He has made certain submissions on the point of applicability of the sections invoked by the Police. According to him, directions given by the Hon'ble Supreme Court in case of ***Arnesh Kumar (supra)*** are perfectly applicable to this case and Para No.12 says that these directions are also applicable to other offences having punishment less than seven years or upto seven years. Learned APP submitted that those directions will not be applicable as the Protection of Children from Sexual Offences Act, 2012 ["POCSO"] is a Special Act.

4. Learned APP filed a copy of intimation given to the First-Informant. It is taken on record and marked as Annexure-X. Today she is present in Court. She has asked for appointment of the Advocate at Government cost or else learned APP may prosecute the case. Accordingly learned APP continued the arguments.

5. I do not agree with the submission of learned APP. The Hon'ble Supreme Court in Para No.12 of the ***Arnesh Kumar*** case has made it clear that these directions are applicable to other offences also and it is connected to the punishment. Any judgement taking different view or any clarification by apex court is not placed on record. It is also important to note that the Co-accused – the mother of the First-

Informant was served with a notice under Section 41-A of the Code of Criminal Procedure, 1973 ["Cr.P.C."] and it is mentioned in the charge-sheet. Learned APP wants to differentiate the role of the present Applicant from that of mother. Be that it may, the directions given by Hon'ble Supreme Court are binding on all of us. So, this Court feels that instead of deciding the matter today on merits, let there be observation that the Investigating Agency may comply with the requirements of the provisions of Section 41-A of Cr.P.C. This cannot be kept pending for indefinite period.

6. Hence, the Investigating Agency may give a notice under Section 41-A of Cr.P.C., within a period of two weeks from today. During that period, the Applicant is protected from arrest. Applicant to cooperate the police. It is presumed that the adress mentioned in the title clause if correct and he resides there. After issuance of notice, Applicant is at liberty to take appropriate steps.

7. Application is disposed of in the aforesaid terms.

8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]