

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 152 OF 2023****IN****ANTICIPATORY BAIL APPLICATION NO. 997 OF 2022**

Mohd. Imtiaz Baig

... Applicant

V/s.

The State of Maharashtra and Ors.

... Respondents

Ms. Bushra Sayed i/b Shriya Prabhu, Adv. for the Applicant.

Mr. Shrikant Yadav, APP for the Respondent/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.**DATED : MARCH 31, 2023****PC. :**

1. This is an application for cancellation of pre-arrest bail granted to the Applicant in Anticipatory Bail Application No. 997 of 2022 by this Court (**Coram : Bharati Dangre, J.**) vide order dated 12/07/2022.

2. Heard learned Counsel for the Applicant and learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

3. The Applicant is arrayed as an accused in Crime No. 254 of 2022 registered with Vakola Police Station, Mumbai registered

pursuant to the First Information Report lodged by Imtiyaz Mohd. The crime was initially registered for the offences under Section 143, 147, 148, 149, 307, 325, 323, 504, 341, 342 read with Section 34 of the Indian Penal Code, 1860.

4. The statement of victim, who is a girl of about 16 years of age was recorded. In view of the said statement, by order dated 27/06/2022, this Court (**Coram : Bharati Dangre, J.**) sought explanation from the Investigating Officer for not adding the provisions under POCSO Act. It appears that pursuant to the said order Sections 8 & 12 of POCSO Act came to be added. Subsequently, this court considered the case on merits and granted pre-arrest bail to the Applicant on *prima-facie* finding that there was previous enmity between both the families and that the members of both the groups had assaulted each other, leading to filing of complaints and cross-complainants against each other. This Court also took note of the fact that the accused in Crime No. 257/2022 were already released on bail and held that the Applicants in Anticipatory Bail Application No. 997 of 2022 were also entitled for similar protection. Hence, upon considering the role attributed to the Applicants and the nature of the offence, this Court granted pre-

arrest bail to this Applicant.

5. Learned Counsel for the Applicant/Intervenor states that this Court failed to consider the fact that provisions under POCSO Act were also added. She submits that the Applicant is involved in committing a serious offence against a minor and hence, the order passed by this Court dated 12/07/2022 needs to be recalled.

6. A perusal of the order dated 12/07/2022 reveals that the advocate for the Intervenor/victim had not appeared before the Court and the victim was not heard in the matter. Hence, I have once again gone through the records and considered the submissions made by the learned Counsel for the Intervenor.

7. The record *prima-facie* reveals that there was free fight between both the groups and the members of both these groups had sustained injuries. The victim, who was below eighteen years of age as on the date of incident, has stated in her statement recorded on 01/04/2022 that she was assaulted by the accused. She has stated that she was kicked on her private part, that the accused had abused her and one of the accused had pushed her and pressed her breast.

On the basis of this statement, provisions of offences under Section 8 & 12 of POCSO Act have been added.

8. Sections 8 & 12 of POCSO Act refers to 'sexual assault'. The main ingredient of offence is that 'touching part of the body of a child with sexual intent'. The main ingredient of Section 8 as well as Section 12 of POCSO Act is 'touch with a sexual intent'. In the instant case, it *prima-facie* appears that the victim was kicked and pushed in the course of the quarrel, which cannot *prima-facie* be construed as 'touch with sexual intent'.

9. Under such circumstances, the bail granted to the Respondent cannot be cancelled solely on the ground that this Court while allowing the application for grant of pre-arrest bail, had not referred to the provisions of Section 8 & 12 of POCSO Act.

10. Having gone through the records, in my considered view, no case is made out for recall of the pre-arrest bail order or to cancel the bail. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)