

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

ANTICIPATORY BAIL APPLICATION NO. 562 OF 2019

Fr. Sabu Thomas

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Sujit Mane a/w. Mr. Vincent D'Silva a/w. for the
Applicant in ABA/562/2019.

Mr. S.V. Gavand, APP for the State.

Mr. Meghshyam Narvekar a/w. Mr. Sandeep Naik for the Applicants
in ABA/783/2019, ABA/875/2019, ABA/2742/2019 and
for the Respondent No.2 in ABA/562/2019.

Mr. Dinesh Vishwakarma a/w. Vincent D'Silva for the
Intervenor in IA/523/2020.

Ms. Smita Patil, Dy.S.P., CID, CBD Belapur a/w.

Mr. Vishal Sawant, PI present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 08th JUNE, 2023.

P. C. :-

. This is an Application under section 438 of Cr.P.C. filed by the
aforesaid Applicant apprehending his arrest in C.R.No.23/2019 registered
at Kherwadi Police Station, Mumbai for offences punishable under
sections 376, 376(f) and 376(n) of the Indian Penal Code and sections 6,
8 and 10 of Protection of Children from Sexual Offences (POCSO) Act,
2012. It is stated that the case was subsequently transferred to CID,
Konkan Bhawan, Belapur, Navi Mumbai and the provisions of Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 have
also been invoked.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR dated 30/01/2019 lodged by the prosecutrix. The facts narrated in the FIR prima facie reveal that the prosecutrix was a student of an educational institution wherein the Applicant was the Principal. She alleged that in the year 2013-14, while she was in 10th standard, the Applicant tried to outrage her modesty. The records reveal that the prosecutrix subsequently passed her 10th standard and joined another college for further studies. In the year 2017, she was appointed as a Probationary Teacher in the same school wherein the Applicant was the Principal. She claims that in the year 2017, the Applicant had physical relationship with her. She states that she had recorded the intimate relationship between her and the Applicant in a spy camera which was placed in her bag. She reported the incident to the police in the year 2019, pursuant to which the aforesaid crime has been registered.

4. There is inordinate delay in lodging the report. It is true that the

delay in lodging the FIR in such cases is a normal phenomenon, occasioned by several factors including the agony and trauma faced by the prosecutrix, family reputation and honour, etc. However, in the instant case, the records reveal that the prosecutrix had recorded the intimate relationship in a spy camera. She did not hand over the spy camera to the police, but handed over the same to a reporter who is one of the accused in C.R.No.46/2019 registered at Kherwadi Police Station. The records reveal that the said accused along with the co-accused in the said crime, who was a tuition teacher persistently blackmailed the Applicant with the said obscene video and coerced him to leak question papers. It is only when the Applicant refused to give the question papers that the prosecutrix lodged the FIR alleging that she was molested in the year 2013-14 and sexually abused in the year 2017. It is stated that till date, the spy camera/original recording is not handed over to the police. What is handed over is only a pen drive.

5. The records particularly the auto-recorded conversation which was submitted to the police with 65(B) certificate, prima facie reveal that even after the alleged incident, the prosecutrix was continuously in touch with the applicant. The above facts and circumstances prima facie indicate that there was a deliberate attempt to rope in the Applicant to extract question papers. Considering the nature of the accusations, this Court by

order dated 05/03/2019 had granted interim protection to the Applicant. It is stated that the Applicant has joined the investigation. He has handed over his cell phone and has co-operated with the investigation. Hence, no case is made out for custodial interrogation. Furthermore, there are no chances of the Applicant absconding or thwarting the course of justice.

6. Considering the above facts and circumstances and particularly the nature of the accusations against the Applicant, in my considered view, this is a fit case to exercise discretion under section 438 of Cr.P.C. Hence, the interim order dated 05/03/2019 granted by this Court, stands confirmed. The Applicant is directed to report to the Investigating Officer as and when required. The Applicant shall not tamper with evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner. The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

7. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)