

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1147 OF 2023

Rajendra Dagdu Gaikwad ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Aabad Ponda, Senior Advocate i/by Mr. Shailesh S. Kharat for the applicant.

Mrs. Veera Shinde, APP for respondent No.1/State.

Ms. Trupti Khamkar, appointed as Legal Aid Counsel for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JUNE 22, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.391 of 2022 for the alleged commission of offences punishable under Section 376(2)(1), 354, 354-A, 506 of the Indian Penal Code, 1860 and under Section 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. The case of the prosecution, in brief, is as follows:

Respondent No.2, who informant, is aged 13 years and 10 months. The informant alleged that she resides with her parents. Her father is in the business of vegetable transport. It is further

alleged that her father knew the applicant and used to go to Chakan to meet the applicant. It is further alleged that in August 2021, the informant and her parents went to Chakan as they wanted to buy a plot; hence they went to the applicant's office. It is alleged that the applicant asked the informant which standard she was studying and her ambitions. The informant replied that her wish was to become an actor. Upon this reply, the applicant told the informant's father he has many acquaintances and friendships with many Directors. He can request them to allow the informant to work.

3. It is further alleged that on 13 June 2022, the applicant called the informant's father on his mobile phone and told him to bring his daughter as a Director is going to come to Hotel Hyatt in Pune, where the Director will see the acting skills of the informant and will offer her work accordingly. Hence, the informant, along with her parents, went to Pune. It is alleged that after going to Pune, the applicant told them that a room was booked in Hotel O for an audition of the informant, and hence they went to the said room. It is alleged that in the said room, the applicant told them that due to the presence of parents, the informant could not deliver her dialogue clearly as she was embarrassed. The applicant asked the parents to wait outside for some time.

4. It is alleged that when her parents went outside the room, the applicant played a song on their mobile phone and asked her to dance with him. When the informant was dancing with the applicant, he stroked her back and body with his hand. However, the informant felt this act may be a part of the audition. It is

alleged that the applicant then called her father and told him that although she needs much improvement, they will take her to another Director for her parents returned to her home.

5. It is alleged that on 8 November 2022, the applicant called the informant's father on his mobile phone and told him that as the applicant was going to Ale Phata for his work, he would come to their home for a meal. The applicant visited their home, had a meal and asked the informant's father whether there was any improvement in the informant or if she was still shy. The applicant said he would like to take a short audition of the informant. It is alleged that the informant's parents went for a walk as usual after having their meal.

6. It is alleged that the applicant then told the informant that she would have to give an audition in a bikini. At that time, the informant refused to do so. It is alleged that the applicant then told the informant that if she wanted to build her career, she had to do such acts. It is alleged that when the informant wore a bikini, the applicant told her to walk, and while she was walking, the applicant came from behind and hugged her. When the informant raised the alarm by calling her mother, the applicant threatened that if she disclosed anything to anyone, he would not spare her and established forceful physical relations with the informant. It is alleged that thereafter, the applicant called the informant's parents would be definitely done and left their home.

7. It is alleged that on 9 December 2022, when the informant was at her maternal uncle's home in village Umbraj, the applicant

called the father of the informant on his mobile phone and told him that he was going to Nashik and, on the way, he would like to take an audition of the informant and then proceed further. When the informant's father told her about the audition, the informant got frightened and told her father that she did not want to give any audition henceforth. It is alleged that upon questioning by her father, the informant disclosed all incidents to her parents. The informant's father called the applicant on his mobile phone and asked him about the incidents. The applicant denied all allegations and that he had indulged in any such incidents and told him to meet him personally at Hotel Kalasagar, Nashik Phata. Therefore, the informant and her parents met the applicant at the hotel, where the applicant told the father that the informant must be having a love affair with somebody and not to make accusations against him. It is further alleged that the applicant also threatened that he would not spare them and that he has not done anything, and that if they think otherwise, they should get the informant aborted. It is alleged that the applicant then forcibly transferred an amount of Rs.3,00,000/- to the informant's mother's account by RTGS and went away from there. However, as this incident was new to them and they were scared, the informant and her parents went to the police station to file a complaint on 24 December 2022.

8. The applicant, therefore, applied to the learned Sessions Judge under Section 438 of the Criminal Procedure Code, 1973, seeking relief of pre-arrest bail, which came to be rejected by an order dated 24 January 2023. Aggrieved thereby, the applicant has

filed present anticipatory bail application.

9. Learned senior advocate for the applicant submitted that there are material inconsistencies in the victim's statement. The victim and her parents have consistently stated in the report, in the statements recorded under Section 161 and in the statement under Section 164(5) of the victim that the first incident took place on 8 November 2022. However, in her supplementary statement, the victim stated that the first incident occurred on 9 November 2022. According to the learned senior advocate, the change in the date was prompted by the production of CCTV footage before the learned Sessions Judge, which shows the applicant's presence in his office on 8 November 2022. The learned senior advocate further submitted that the applicant is falsely implicated. He submitted that the investigation is complete, and a charge sheet is filed against the application under Section 299 of the Criminal Procedure Code, 1973. Therefore, custodial interrogation of the applicant is not required. He submitted that filing such a complaint was an attempt by the victim's parents to extort the applicant. He, therefore, sought relief under Section 438 of the Criminal Procedure Code, 1973.

10. Per contra, learned APP and the advocate for the victim submitted that the statement of the victim and her mother gives sufficient details of the incidents. The investigating officer verified the booking of a room in a hotel on 7 June 2022. The delay in lodging the first information report can be explained during the trial; however, at this stage, due to the applicant's threats, she did not complain. An applicant is an influential person in the real

estate business, and therefore, the applicant may tamper with the prosecution's evidence.

11. On prima facie perusal of the charge sheet and the transcript produced on record by the applicant, along with other material produced on record by the parties, the following circumstances prima facie appear:

- (i) the victim is 13 years and 10 months old, and the applicant is 50 years old;
- (ii) the material on record indicates that Room No.410 was booked in the name of the victim girl on 7 June 2022;
- (iii) the statement of the victim and her mother under 164(5) gives graphic details of the first incident dated 8 November 2022, which according to the victim (supplementary statement), is dated 9 November 2022.

12. The aforesaid circumstances dispel the theory of false implication of the applicant.

13. In so far as the argument of the learned senior advocate that the date of the incident stated by the victim and her parents consistently till the supplementary statement was changed on 4 January 2023 is concerned, the effect of such inconsistency needs to be considered at the stage of the trial. The other material on record in the form of statements of the victim under Section 164, and her mother are sufficient at this stage to indicate sexual assault by the applicant on the victim, aged 13 years 10 months.

14. In so far as the argument of the learned senior advocate that custodial interrogation of the applicant is not necessary and, therefore, the applicant deserves relief under Section 438 of the Criminal Procedure Code, 1973 is concerned, reliance can be placed on the judgment of the Apex Court in the case of **Sumitha Pradeep v. Arun Kumar C.K. & Another** reported in 2022 SCC OnLine SC 1529, wherein the Apex Court was considering grant of bail to an accused charged with an offence under Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be

looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

15. In so far as transcripts relied upon by the applicant are concerned, the transcript indicates the proposed settlement of the offence registered by the victim. However, the transcripts and material relied on by the applicant do not cast doubt on the incidents alleged in the report.

16. The applicant is 50 years old. The allegations against the applicant are serious. The applicant is an influential person.

17. On overall perusal of the material on record, a prima facie case against the applicant is proved. Therefore, in my opinion, the applicant is not entitled to relief under Section 438 of the Criminal Procedure Code, 1973.

18. The anticipatory bail application stands rejected. No costs.

19. At this stage, the learned advocate for the applicant prayed for the grant of ad-interim relief granted during the pendency of the present application. Considering the nature of the allegations, ad-interim relief granted earlier shall continue for four weeks from today.

(AMIT BORKAR, J.)