

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

ANTICIPATORY BAIL APPLICATION NO. 1233 OF 2023

Mr. Mahesh Menon

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Ganesh Gore i/b. Apex Juris for the Applicant.

Mr. S.H. Yadav, APP for the State.

Mr. Ashwin Thool i/b. Archishmati Chandramore for R.No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 08th JUNE, 2023.

P. C. :-

. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R.No.1447/2022 registered with Samata Nagar Police Station, Mumbai for offences punishable under sections 376, 376(2)(n), 506 of the Indian Penal Code and sections 6 and 10 of Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The aforesaid crime was registered pursuant to the FIR dated 26/11/2022 lodged by the wife of the Applicant herein. The FIR concerns the girl child. It is seen that the first informant, the mother of the child, has disclosed the name of the child in the FIR. Section 23(2)

of the Protection of Children from Sexual Offences (POCSO) Act prohibits the disclosure of the identity of a child victim of sexual offence including the name and address of the child. Disclosure of the identity of the child is unfortunate and unacceptable. The Investigating Agency is directed to redact reference to the victim's identity as disclosed in the FIR.

3. The facts narrated in the FIR prima facie indicate that the marriage of the Applicant and the first informant was solemnized in the year 2001. They have a girl child from the said wedlock. It is evident from the FIR that the relationship between the Applicant and the first informant is strained since 2020. The records indicate that the first informant had lodged FIR dated 10/07/2021 against the Applicant alleging that she was being subjected to cruelty since 2001. Pursuant to the said report, crime was registered against the Applicant for offences under sections 498-A, 504 and 506 of the Indian Penal Code. The Applicant was granted pre-arrest bail in the said crime. Subsequently, the first informant alleged that the Applicant had subjected her to unnatural sex and had thereby committed offence under section 377 of IPC. The Applicant had lodged online complaint No.149951 of 2021 apprehending false implication in domestic

violence case. It is stated that the first informant thereafter initiated proceedings under D.V. Act.

4. The first informant thereafter lodged the FIR dated 26/11/2022 alleging that sometime in August, 2021, she saw behavioral changes in her child. The child would cry whenever she had to cross the room of the Applicant and whenever she came out of his room. She appeared to be scared. The first informant claims that some time in the end of October, 2022, she took the child in confidence and questioned the child. The first informant claims that her daughter informed her that the Applicant would look at her inappropriately and that he touched her lips, chest and stomach and private parts. The first informant lodged the report about the said incident on 26/11/2022 alleging that the Applicant had sexually abused the minor child from August, 2022 to October, 2022.

5. It is pertinent to note that there is considerable delay in lodging the FIR. The victim girl was neither taken to the Doctor nor was she taken to the Counselor to address the issue of behavioural change. Moreover, the subject FIR was lodged after the Applicant was granted bail in the previous crime. The records indicate that there is

matrimonial dispute between the first informant and the Applicant. It is stated that the settlement talks to resolve the matrimonial dispute failed due to the exorbitant monetary demand made by the first informant. Considering the sequence of events, the possibility of the minor child being dragged into the matrimonial dispute, cannot be ruled out.

6. In view of the above facts and circumstances, by order dated 26/04/2023, this Court had granted interim protection to the Applicant. Learned APP states that pursuant to the said order, the Applicant has reported to the Investigating Officer and that he has been interrogated. No case is made out for custodial interrogation. Hence, the interim relief granted vide order dated 26/04/2023, stands confirmed. The Applicant shall report to the Investigating Officer as and when required.

7. Application stands disposed of.

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Date: 2023.07.05
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(SMT. ANUJA PRABHUDESSAI, J.)