

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 1570 OF 2023

Chaitan Pandurang Jadhav & Anr. ... Applicants

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Prashant S. Hagare, for the Applicants.

Mrs. Rutuja Ambekar, APP for the State-Respondent
No.1.

Mr. Rupesh A. Zade a/w Mr. Adesh R. Kale, for
Complainant-Respondent No.2.

Mr. Jaisingh Kachare, Malegaon police station, Taluka
Baramati, Pune

CORAM : AMIT BORKAR, J.

DATED : JUNE 21, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.146 of 2023 registered with Malegaon police station, Taluka Baramati, District Pune for the offence punishable under Sections 354, 354-D, 506 of the Indian Penal Code (for short 'IPC') and under Sections 8 and 12 of Protection of Children from Sesual Offences Act, 2012 (for short 'POCSO Act'). Applicants are seeking relief under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.).

2. According to prosecution, the victim filed a complaint alleging that on 6 April 2023 at 8:00 am, she was standing outside the gate of college. The applicant along with other co-accused came there in Swift car and asked her, reason as to why she was

not calling him. The applicant stated that he has having her photos which he will make viral. It is alleged that the accused persons threatened to kill her family members. It is, thereafter alleged on 8 April 2023, while the victim was alone in front of her house at around 2:00 pm, accused persons made obscene gestures. The applicant No.1 grabbed her hand and performed acts which she felt ashamed. The applicant threatened to kill her and her family members. Therefore, the victim lodged report against applicants.

3. The applicants filed application before learned Sessions Judge seeking protection from arrest, by an order dated 29 April 2023 their application is rejected.

4. Learned Advocate for the applicants submitted that applicant No.1 and victim were in relationship and he has been falsely implicated. According to him, there no ingredients as contemplated under Section 8 of POCSO Act, are fulfilled. He submitted that there is no active role attributed to applicant No.2. Custodial interrogation of applicant No.1 is not required.

5. Per contra, learned APP submitted that the version of victim has been supported to the statement of victim recorded under Section 164(5) of the Cr.P.C. wherein victim has narrated both the incidents graphically. The said statements attribute active role to applicant No.1. Statements under Section 164(5) of Cr.P.C., prima facie satisf ingredients of offence under Section 8 of POCSO Act.

6. Perused the case diary and the material on record including statements of victim recorded under Section 164(5) of Cr.P.C.

Prima facie, it appears that applicant No.1 had touched the victim as per version of the victim. The intention of touch has to be considered with the ingredients of offence under Section 8 of POCSO Act. However, at this stage detailed scrutiny of material is not required.

7. Considering scope of Section 438 of Cr.P.C., based on broad probabilities and statement under Section 164(5) of Cr.P.C. Prima facie ingredients of offence under Section 8 of POCSO Act are made out as there is no serious dispute about age of the victim as referred in the statement.

8. In so far as applicant No.2 is concerned, except alleging role that he called upon the victim to applicant No.1. No other role is attributed to applicant No.2. Therefore, applicant No.2 is entitled to relief of pre-arrest bail. Hence, following order:

- a) The application in relation to applicant No.1 is rejected.
- b) In the event of arrest of applicant No.2, Suraj Pandurang Jadhav in connection with C.R. No. 146 of 2023 registered with Malegaon police station, Taluka Baramati, District Pune for the offence punishable under Sections 354, 354-D, 506 of IPC and under Sections 8 and 12 of POCSO Act, he be released on bail on furnishing PR. bond of Rs.50,000/-, along with one or two sureties in the like amount.
- c) The applicant No.2 shall remain present before the concerned police station on 23rd, 26th and 28th June, 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.

- d) The applicant No.2 shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
 - e) The applicant No.2 shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.
 - f) The applicant No.2 shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.
9. The anticipatory bail application stands disposed of.

(AMIT BORKAR, J.)