

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

CRIMINAL APPLICATION NO. 225 OF 2022

Sonali M. Ayur Bhatt

...Applicant

vs.

Neeraj Gopal Datt Bhatt and Anr.

...Respondents

Mr.D.N.Salvi a/w Mr.Sahil Salvi and Mr.Narendra Kalpoth –
Advocates for Applicant.

Mr.C.J.Doveson a/w Ms.Prachi Gharat i/b. Ex Legalis – Advocates for
Respondent No.1.

Mr.S.R.Agarkar – APP for Respondent No.2 – State.

Mr.K.R.Wankhade – API – Sanpada Police Station – Navi Mumbai.

CORAM : S. M. MODAK, J.

DATED : 21ST JULY 2023

P. C. :

1. The Respondent-Accused has filed compilation of documents.

It is taken on record and marked as Annexure-X. Learned Advocate
for the Applicant seeks time to take instructions. He apprised me
about the issue involved in this Application. The only issue is about
granting an opportunity to the First-Informant while hearing the
Anticipatory Bail Application on merits.

2. The opportunity of hearing is required in order to put forth
the merits of the matter from the point of view of the First-

Satish Sangar

Informant. He relied upon the observations by a Division bench of this Court in case of *Arjun Kishanrao Malge V/s. State of Maharashtra and Others*¹. Its order copy is tendered on record. It is taken on record and marked as Annexure-Y. Copy is supplied to other side. He invited my attention to the observations in Para No.15. It is reproduced as below :-

“15. On a conjoint reading of Section 40 of the POCSO Act read with Rule 4 of the POCSO Rules the legislative mandate is that of complete information to be made available, of all the proceedings and its progress in relation to the offences under the said Act, to the parent or the guardian of the child, with the sole object to safeguard the interest and well being of the child at every stage of the judicial process, to give effect to the mandate of Articles 15 and 39 of the Constitution. On behalf of the petitioner, we have been shown several orders passed by the Courts trying such offences. We see from such orders, that the concerned Courts have completely overlooked the mandate of Section 40 of the POCSO Act read with Rule 4 of the POCSO Rules”.

3. A similar issue is raised before this Court. It is pertaining to the rights of the children to participate in the trial of offences under the Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”]. Section 14 of the POCSO Act says about right of a child to take assistance of expert etc. On behalf of a child, a right of the family or

¹ Public Interest Litigation No.5 of 2021 : 8th April, 2021 : Bombay High Court

guardian of the child to take legal assistance is recognized.

4. The order impugned in this Application was passed by the Court of Additional Sessions Judge on 8th April, 2022. Its copy is there on Page No.28. We nowhere finds that the First-Informant is heard.

5. In view of the above, the order cannot be sustained in the eyes of law. Now, the Court of Additional Sessions Judge is established at Belapur. Hence, the matter is remanded with the direction to the concerned Court to hear the parties including the First-Informant on the point of grant of anticipatory bail.

6. In view of the fact that the anticipatory bail is granted on 8th April, 2022 and now, the charge-sheet is filed, I intend to continue that protection for a limited duration. In view of that, following order is passed :-

O R D E R

- (i) The order dated 8th April, 2022 passed by the Court of Additional Sessions Judge-6, Thane in Anticipatory Bail Application No. 1289 of 2022 is set aside.
- (ii) Let the Court of Additional Sessions Judge Belapur, Dist. Thane is directed to hear the parties including the First-Informant on the point of grant of anticipatory bail.
- (iii) He can do so after considering the merits as

canvassed on behalf of First-Informant, Prosecution and the materials collected along with the charge-sheet.

- (iv) This Court has not opined about merits of either of the parties.
 - (v) Let the parties are directed to appear before the Court of Additional Sessions Judge – Belapur on 1st August, 2023.
 - (vi) Let the hearing be conducted as early as possible not later than one month from 1st August, 2023.
 - (vii) Till hearing of that Application, the anticipatory bail granted to this Applicant is continued.
7. Application is disposed of in the aforesaid terms.
8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]