

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2652 OF 2023

Rahul Baput Hivare ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Vivek Salunke a/w. Mr. Anuj Tiwari, for the Applicant
Ms. P.N. Dabholkar, APP, for the Respondent/State.
Ms. Parikrama Khot a/w. Mr. Bhushan Raut, for the Ori.
Complainant.
Ms. Chhaya Borkar, PSI, Hinjwadi police station, present.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 21, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. This application is preferred seeking pre-arrest bail in
connection with C.R. No. 1015 of 2023 registered at Pimpri-
Chinchwad police station for the offences punishable under sections
341, 354, 354-D and 506 of Indian penal Code, 1860 and sections 8
and 10 of the Protection of Children From Sexual Offences Act, 2012
(POCSO Act, 2012).

3. The applicant is working as a Sepoy with 14 MARATHA LI
Regiment in the Indian Army. The applicant is a national level

shooter and has participated in various shooting competitions. The applicant practices shooting at the shooting range at Chatrapati Shivaji Maharaj Stadium, Balevadi, Pune.

4. The first informant's daughter aged 13 years and 9 months was practicing at Ronak Pandit Centre in the said academy. On 19th August, 2023 the first informant and his wife were were informed by the management of the said academy to come to the academy on the next day. Upon inquiry with the daughter (victim), the later informed that prior to three months while the victim had been to the terrace of the academy, the applicant came from behind, lifted his in her arms and subjected her to sexual assault. When she tried to rescue herself, the applicant pushed her in a corner and again sexually assaulted her.

5. On the next day, when the first informant and his wife visited the academy, they were informed that on the previous day, the victim was found crying. Upon being inquired, the victim had narrated the aforesaid incident. The first informant further alleged that on 25th August, 2023 also the applicant had again stalked the victim. Hence, the report.

6. The applicant approached the Special Court at Pune. The Additional Special Judge declined to exercise the discretion in favour of the applicant.

7. Mr. Salunke, learned counsel for the applicant, submitted that on account of the professional rivalry amongst the competitors and with the management of the shooting academy, the applicant has been falsely roped in with a view to wreak vengeance. It was submitted that there is an inordinate and unexplained delay of more than three months in reporting the incident which had allegedly occurred in the month of May, 2023. It was not the case of the first informant that the victim refused to attend the academy on account of alleged sexual assault by the applicant. The learned counsel made an endeavour to demonstrate that there is no material to show that during the relevant period the applicant had been to the academy for shooting practice. On the contrary, the certificate issued by the concerned controlling authority of 14 MARATHA LI Regiment indicates that the applicant was away from Pune for a number of days during the relevant period. In any event, since the applicant has been debarred from practicing in the said academy and has also been transferred to a station in Madhya Pradesh, there is neither any possibility of tampering with evidence

nor fleeing away from justice. Therefore, the applicant deserves the exercise of the discretion.

8. As against this, the learned APP would submit that the allegations against the applicant are grave. A child has been molested and subjected to sexual assault. There is material to show that the applicant was in Pune during the relevant period and has also surreptitiously removed the record maintained in the academy which would have shown his presence in the academy during the relevant period. Therefore, the applicant does not deserve grant of any relief.

9. Ms. Khot, learned counsel for the first informant/ respondent No. 2 also resisted the prayer for pre-arrest bail.

10. I have carefully considered the allegations in the first information report, the statement of victim and the material on record.

11. The aspect of delay sought to be pressed into service on behalf of the applicant does not deserve undue weight at this stage. The allegations in the first information report indicate the

circumstances in which the first informant became aware of the sexual exploitation of the victim. Having regard to the age of the victim the aspect of delay does not assume much significance. Prima facie, it seems that the management of the academy responsibly pursued the matter when the child was allegedly molested.

12. The endeavour of Mr. Salunkhe to draw home the point that, on account of professional rivalry the applicant has been falsely roped in, is required to be appreciated in the light of the fact that the victim and her parents prima facie do not seem to have any axe to grind against the applicant. To add to this there are statements of two other girls who practice shooting in the said academy which reflect upon the lascivious conduct of the applicant. The claims of those girls are supported by CDR, tendered for the perusal of the Court.

13. The absence of material especially the CCTV footages to show the presence of the applicant in the academy forcefully urged by Mr. Salunkhe deserves to be considered in the light of the fact that the alleged incident of subjecting the victim to sexual assault took place on the terrace of the building. Second, from the certificate issued by

Captain / Major of 14 MARATHA LI Regiment, it appears that the applicant was in Pune from 1st February, 2023 to 8th February, 2023 for firing practice and from 12th May, 2023 to 21st May, 2023 he was on 10 days casual leave. From 22nd May, 2023 to 9th June, 2023 he was at Pune as indicated in the movement order dated 11th May, 2023. Prima facie there is material to show that the applicant was at Pune during the substantial period of May and in fact was at Pune for firing practice at least upto May, 2023 and again from 21st May, 2023 onwards. To add to this, there is material to show that the applicant took away his personal documents from the office of the academy and did not return those documents.

14. Prima facie, there is material to indicate that the applicant allegedly sexually assaulted the victim, stalked her and also inappropriately behaved with two other girls practicing in the very same academy. In the face of categorical statement of the victim and other witnesses, at this stage, I find it rather difficult to accede to the submission of Mr. Salunkhe that the applicant has been framed on account of professional rivalry. The submission that the applicant is an acclaimed shooter loses sight of the promising career of the victim and the trauma the victim was allegedly made to undergo on account of sexual assault by the applicant. In the face

of the allegations that the applicant had purposefully removed the personal documents from the academy, the custodial interrogation of the applicant seems to be warranted for a complete investigation.

15. In the aforesaid view of the matter, I am not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.
- 3] At this stage, the learned counsel for the applicant prayed for continuation of the interim protection. In the light of the view which this Court is persuaded to take, I am not inclined to continue the interim protection any more. Thus, the oral application for continuation of interim protection stands rejected.

(N. J. JAMADAR, J.)