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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2906 OF 2022**

Vikas Uttam Kadam ... Applicant
Vs.
1. State of Maharashtra
2. XYZ ... Respondents

Mr. R. V. Bansode for the Applicant.
Mr. N. B. Patil APP for Respondent No.1-State.
Ms. Sheetal Ubale for Respondent No.2.
Mr. Tushar Manik Hange from Dahiwadi police station present.

CORAM : S. M. MODAK, J.

DATED : 20TH JANUARY 2023

PC:-

1. Heard learned Advocate Mr. Bansode for the Applicant, learned APP Mr. Patil for Respondent No.1-State and learned Advocate Ms.Ubale for Respondent No.2.
2. The Applicant is accused of committing rape on the prosecutrix by taking advantage of her loneliness in house on 22nd May 2022.
3. Though the Applicant is originally resident of village Parkhandi, Taluka Man, District Satara, the Applicant is residing at Virar, Mumbai, since he is serving in railway police.
4. The house of the Applicant is situated adjoining to the house of prosecutrix. On 22/03/2022 the Applicant called the father of

prosecutrix and then he went to house of the prosecutrix for purpose of updating mobile as there was wifi available in house of the prosecutrix. By taking advantage of loneliness of victim, the Applicant had sexual intercourse with the prosecutrix. At the time of lodging FIR on 19th May 2022, the age of prosecutrix was 17 years 9 months and 20 days.

5. On 18th May 2022, she realised that her menstrual period has stopped, hence, along with her parents she consulted Dr.Sanay More at Koregaon. It was revealed that she was carrying pregnancy of 9 weeks 2 days and then she lodged complaint with Dahiwadi police station on 20th May 2022 and the offence under sections 376, 506 of the Indian Penal Code and under sections 4 and 6 of POCSO Act came to be registered.

6. The Applicant is denying his involvement, though on 22/03/2022 he was not on duty and according to him he has not gone to his native place. Learned Advocate Mr.Bansode for the Applicant calculated 9 weeks and 2 days pregnancy from 18th May 2022 backwards and accordingly this period does not co-relate to the date of incident dated 22/03/2022. Such calculation cannot be accepted. According to him he has got bonafide intention of going to the house and that's why he called father of the prosecutrix.

7. Learned Advocate for Respondent No.2 contended that now the prosecutrix has become major and she has filed petition for quashing the FIR.

8. Learned APP strongly opposed the bail for the reason that his custodial interrogation is required as it is serious offence.

9. The blood samples were sent for DNA examination and its report is awaited. The blood samples of the Applicant were taken by the police when he attended the police station. On the one hand the possibility of losing job by the Applicant, after arrest is contended before this Court whereas on the other hand there is claim made on behalf of the prosecution about seriousness of offence involving minor victim. There is also an attempt made on behalf of prosecution by submitting that the Applicant may pressurize victim as it is evidenced that she has filed the quashing petition.

10. It is true that the offence is serious involving minor prosecutrix. When enquired with learned APP, it is pointed out that statements either of inhabitants of house or of neighbors were not recorded. It is for the reason that no one was present in the house and criminal law was set in motion after two months from the date of incident. In this case I am inclined to give more priority to liberty of the Applicant as compared to right of police to carry out custodial interrogation. I think by giving more attendance to the Applicant their purpose would be served. I say so only for the reason that the FIR is lodged after two months and from the FIR, it is clear that the prosecutrix has not protested about the incident, either on the same day or subsequently till the time her menstrual period has stopped. So the interim protection needs to be confirmed. Hence, the following order is passed :

ORDER

- (i) The Applicant is allowed.
- (ii) Interim protection granted on 18th October 2022 is confirmed.
- (iii) In case of arrest of the Applicant - Vikas Uttam Kadam, the Applicant be released on bail on furnishing personal bond and surety of Rs.25,000/- in connection with the FIR No.122/2022 for the offences punishable under sections 376, 506 of the Indian Penal Code and under section 4 and 6 of the POCSO Act registered with Dahiwadi police station.
- (iv) The Applicant to give attendance to Dahiwadi police station, Satara on every Monday and Thursday from 10 am to 12 noon.
- (v) The Applicant shall not threaten prosecution witnesses or pressurize them in any manner.
- (vi) If there is breach of any of condition, the Applicant will be liable for cancellation of bail after following the procedure.

(S. M. MODAK, J.)