

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.192 OF 2023

Nazma w/o Khalid Akhtar

Vs.

State of Maharashtra through P.S.O. Sadar, Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. V. Rai, Counsel for applicant.

Mr. A. M. Kadukar, APP for Non-applicant No.1/State.

Ms. Kirti Deshpande, Advocate (appointed) for Non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/06/2023

1. The present application is filed by applicant for grant of anticipatory bail in the event of her arrest in connection with Crime No.66/2019 registered with Police Station Sadar, Nagpur for the offence punishable under Sections 8 and 12 of the Protection of Children From Sexual Offences Act.

2. The applicant is apprehending arrest at the hands of police as the victim has lodged report at Nagpur City Police Station alleging that he has seen one advertisement in newspaper namely Nav Bharat wherein it was advertised that for TV serial and for movie some child Artist are required. The name of contact person was mentioned as Akthat Khalid @ Yash resident of Bairamji Towar, Sadar Nagpur. Accordingly he

approached to the said person by visiting Shubham Apartment at the flat situated at second floor, wherein he met one Akthar Khalid @ Yash. He inquired with the said person regarding the advertisement and said person demanded Rs.9,000/- for preparing the Artist Card. Accordingly, he gave Rs.9,000/- in two installments to the said Akthar Khalid @ Yash. Thereafter, his mother has received the phone call from said Akthar Khalid @ Yash and they were called. He was approached said Akthar Khalid @ Yash for rehearsal. The Akthar Khalid @ Yash asked him to remove his all clothes and kept him in a nude condition. When he was in a nude condition the present applicant has touched his private organs and sexually assaulted him. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

3. As per the contention of the applicant the provisions of the Protection of Children From Sexual Offences Act are not at all applicable in the present case as informant is not minor. It is further contention of the applicant that she is falsely implicated in the alleged offence. In fact, no such incident has occurred. She is a patient of paralysis and unable to move from one place to another. Her custodian interrogation is not required and hence, she be released on anticipatory bail in the event of her arrest.

4. The said application is strongly opposed by the learned APP for the State as well as learned Counsel for the respondent No.2, on the ground that there is no reason assigned to implicate the accused falsely in the offence. In fact, the respondent No.2-victim was sexually harassed and assaulted by the present applicant by touching to his private part. Thus, *prima facie* material is sufficient to show the involvement of the present applicant with the alleged offence and hence, application deserves to be rejected.

5. Heard learned Counsel Mr. Rai for the applicant he vehemently submitted that the informant is not all child within the definition given under the provisions of the Protection of Children From Sexual Offences Act. He has already attained the age of majority, therefore the provisions of the Protection of Children From Sexual Offences Act are not at all applicable. He further submitted that it is the case of the false implication as no such incident has occurred. Moreover, the applicant is suffering from various ailments including she is a patient of paralysis and unable to move from one place to another. Her physical custody is not at all required and hence, she be released on anticipatory bail in the event of her arrest.

6. Per contra, learned counsel for the respondent No.2 submitted that the allegation itself is

sufficient to show the involvement of the present applicant with the alleged offence. In fact, no reason is assigned by the applicant to show her false involvement in the present crime. At this stage, the allegations made by the victim itself is sufficient to show the involvement of the present applicant. Learned APP also reiterated the said contentions and submitted that application deserves to be rejected.

7. Heard both the sides. Perused the investigation papers. From the recitals of the FIR, it is apparent that the victim boy who was less than 18 years of age at the time of alleged incident was subjected for sexual assault by the present applicant by touching to his private part. It further apparent that repeatedly the said act was committed with the victim boy. The said act was committed by calling the victim boy on the promise of giving role in TV serial and the movie. The victim boy approached to one Akthar Khalid as he wants work in a TV serial and the movie and he attracted by the advertisement published in a newspaper. Thus, *prima facie* material on record sufficiently shows that victim boy was subjected for sexual assault by the present applicant. It is vehemently submitted by the learned Counsel Mr. Rai for the applicant that physical custody of the present applicant is not required for the custodial interrogation and therefore she be released on anticipatory bail. This aspect was considered by the Hon'ble Apex Court in the

case of **X Vs. Arun Kumar** reported in **2022 LiveLaw (SC) 870** wherein the Hon'ble the Apex Court has considered that the first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

8. In view of the above observations, in the present case also the minor child was subjected for sexual assault by the applicant. Merely her custodial interrogation is not sufficient to grant her anticipatory bail. Considering the gravity and seriousness of the offence the application deserves to be rejected.

9. In view of that, application is hereby rejected and disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate