

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

CRIMINAL APPLICATION (ABA) NO.203 OF 2023

DHARMENDRA UTTAMRAO HIWALE

Vs.

STATE OF MAHARASHTRA, THROUGH ITS POLICE STATION PSO, BULDHANA CITY,
TALUKA AND DISTRICT BULDHANA 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. P. S. Wathore, Advocate for applicant.
Mr. S. M. Ghodeswar, Advocate for respondent No.1/State.
Mr. Amit Kukday, (Appointed) Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/07/2023

1. The present application is preferred for grant of anticipatory bail in the event of arrest in connection with Crime No.138/2023 registered at Police Station Buldhana City, District Buldhana for the offence punishable under Section 377 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012.

2. The applicant is apprehending arrest at the hands of Police as the crime is registered on the basis of report lodged by victim boy aged about 15 years on an allegation that he is studying in Rajiv Gandhi Military School, Kolwad, District Buldhana. The present applicant is teacher in the said school and teaches the Science subject. It is further alleged that prior to one

month of the incident at about 12.00 p.m. during the lunch hours when he was proceeding for lunch towards Mess, the present applicant entered his class room, hold his hand and rub his hand with ill-intention and left the place. On 18.02.2023, the school was having holiday on the occasion of Mahashivratri, at the relevant time, the present applicant entered in the school and subjected him for sexual harassment by taking him in a Science Lab. A similar incident was repeated on 20.02.2023, 21.02.2023 and 22.02.2023. On the basis of the said report, police have registered the crime against the present applicant.

3. As per the contention of the present applicant due to the political rivalry in the school, he is implicated in the alleged offence falsely. He is award winner teacher and having a good reputation in the school. Merely to remove him from the service, this false allegations are made against him with the help of the victim boy. There is absolutely no material against him to connect with the alleged offence. As far as his interrogation is concerned, he is ready to abide all the conditions. His physical custody is not required and he be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State of the ground that the serious allegations are made against the present applicant. Initially, in the year

2008, the applicant was involved in a similar type of offence and he rendered an apology to the School Administration, therefore, no action was taken against the present applicant. The investigation paper shows that 2 to 3 boys have made complaints about the behaviour of the present applicant and their statement at this stage, is sufficient to show the involvement of the present applicant. The Investigating Officer has also recorded the statement of some employees who have also stated that they have seen the victim boy and other boys in a scared condition. Thus, there is a *prima facie* material against the present applicant to connect him with the alleged offence.

5. The said application is strongly opposed by respondent No.2 victim boy on the ground that the informant is a victim of the sexual lust of the present applicant, if he is released on anticipatory bail, there is apprehension of repeating the similar type of act at the hands of the present applicant. His custodial interrogation is required and hence, the bail application deserves to be rejected.

6. Heard learned Counsel Mr. Wathore for the applicant. He reiterated the contention and submitted that the applicant is implicated in the alleged offence on the basis of false allegation. The present applicant is award winner. He has received various awards as a best

teacher and therefore, a rival group of co-employees is against him and he is a victim of the said politics in the school. It is further submitted by him that on 18.02.2023 the incident was happened at school on holiday and this fact can be verified from the various electronic documentary evidence. He further submitted that as far as the incident of 22.02.2023 is concerned, he was deputed on duty as an examiner, the document regarding his deputation to work as examiner is filed on record which sufficiently shows that the applicant is victim of false allegation. Thus, there is absolutely no material against the present applicant to connect him with the alleged offence. His physical custody is not at all required and hence, he be released on anticipatory bail.

7. The learned APP and learned Counsel for respondent No.2 strongly opposed the application on the ground that the allegations are of serious nature, there is apprehension that if the applicant is released on bail in the event of his arrest, there is every likelihood of committing similar types of offence and prays for rejection of the application.

8. Having heard both the sides and on perusal of the investigating papers, the crime is registered on the basis of report lodged by the victim boy aged about 15 years, it reveals that he is studying at Rajiv Gandhi Military School, Kolwad, which is a residential school. It

further reveals that the present applicant is a teacher in the said school and teaching the subject Science. It is alleged in the FIR that the present applicant has subjected the victim boy for sexual assault by touching the private part of the said boy. The informant has specifically narrated the said incident. As per the incident regarding 22.02.2023 is concerned, it reveals that there was a break at about 3.00 p.m., at the relevant time, the present applicant visited the classroom of the informant. The informant and his brother hid themselves in the toilet, but the applicant made them and took them along with him and subjected for sexual assault. The informant has narrated the entire incident in detail which is reflected in the FIR. During the investigation, the Investigating Officer has inquired with the other students and there are complaints received against the present applicant which are lodged by the other students also. During the investigation, the statements of some witnesses are recorded. From the said statement, it is reflected that the informant and his brother were seen in scared conditions by some of the employees on 22.02.2023. Thus, not only the statement of the victim boy, his brother but the statement of the co-employee also discloses that the boys were on a scared conditions and they have disclosed the incident to the said witnesses. It further reflects from the investigation papers that in the year 2008, the applicant was involved in a similar type of incident regarding the same, he has

furnished one affidavit on 08.08.2008 to the School Administration and disclosed and admitted that he has committed the mistake and in future he will not commit such type of mistake. Though learned Counsel for the applicant submitted that the said affidavit does not bear his signature, but whether it is his signature or not, it is a matter of evidence. At this stage, there is a *prima facie* material against the present applicant.

9. As far as the applicability of Section 3 punishable under Section 4 of the Protection of Children From Sexual Offences is concerned, Section 3 speaks about the penetrative sexual assault and if, Section 3(c) shows a person is said to commit penetrative sexual assault if he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person. He has committed the penetrative sexual assault. The said penetrative sexual assault is punishable under Section 4 of the Protection of Children from Sexual Offences Act. The allegation against the present applicant is that the applicant has taken the victim boy in a Science Lab on 18.02.2023 and touch his private part and on 20.02.2023 also the similar incident has taken place and on 22.02.2023. It is alleged that the applicant

has subjected him for penetrative sexual assault. Thus, the allegation made by the informant in the FIR, attracts Section 3 punishable Section 4 of Protection of Children From Sexual Offences Act. Considering the allegation against the present applicant, the offence under Section 8 punishable Section 9 is also made out from the allegations. The informant who is studying in a residential school and the applicant was Guardian there but the applicant has subjected the victim boy for sexual assault. There is criminal antecedents which is apparent from the affidavit against the present applicant as the affidavit discloses that initially also the applicant was involved in a similar type of activity but the School Administration has accepted his apology and continued him in his service. Considering the investigation carried out by the Investigating Officer, there is *prima facie* material against the present applicant to connect him with the alleged offence. The offence alleged is of serious nature and heinous crime. Considering the same, the application for anticipatory bail deserves to be rejected.

10. The offence in the nature is grievous one. The consideration for grant for anticipatory bail is different than the grant of regular bail under Section 439 of the Code of Criminal Procedure. While granting anticipatory bail first and foremost consideration is to be looked into the gravity of the offence. Here in the

present case, the victim boy is subjected for sexual assault by the teacher which shows that the offence is of serious nature and therefore, the application for grant of anticipatory bail deserves to be rejected. Hence, proceed to pass following order.

11. The application is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate