



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

989 ANTICIPATORY BAIL APPLICATION NO. 922 OF 2024

SAJIDMIYA SHAIKH HABIBMIYA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. Prashant Prabhakar Giri
APP for Respondent/State : Mr.P.K. Lakhotiya
Advocate for Respondent No.3 : Ms.Shilpa L. Awachar (appointed
Through Legal Aid)

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CORAM : **SHIVKUMAR DIGE, J.**
DATE : 26th June, 2024.

P.C.:

1. The applicant apprehends arrest in connection with FIR No.0122 of 2023 registered with Kondalwadi Police Station, Tq.Biloli, Dist.Nanded, for the offence punishable under sections 376(3), 452 of the Indian Penal Code (For short, "IPC") and sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
2. It is the prosecution's case that when victim was in her house at Ardhapur, accused no.1 came to her house and sexually assaulted her. Thereafter there was abdominal pain to the victim, hence she was examined by the doctor and in the medical examination, it was revealed that she was pregnant of 4 to 5 months. The victim filed complaint on 17th October, 2023 against accused no.1 Sajju Pashamiya Shaikh, resident of Ardhapur. The police arrested accused no.1. He was released on regular bail by the trial Court. Thereafter, the

police recorded supplementary statement of the victim on 20th November, 2023 and in the said statement, she has stated that one day when she was at her house, the applicant had come to her house and committed sexual intercourse with her. On her supplementary statement, the police mentioned the name of the applicant in the F.I.R.

3. It is contentions of the learned counsel for the applicant that the victim is 17 years 3 months old. In the F.I.R. no name of the applicant is mentioned. When accused no.1 filed application for regular bail before the trial Court, the mother of the victim had filed affidavit stating that name of the accused no.1 is wrongly mentioned in the F.I.R. The learned counsel further submitted that there was some understanding between accused no.1 and victim's family and the applicant is falsely implicated in this case. There is delay of 32 days to lodge the complaint against the applicant. The learned counsel further submitted that if the applicant is released on bail, the applicant is ready to cooperate with the Investigating Officer. Hence he requested to allow the application.

4. It is contention of the learned APP and the learned counsel appointed to represent the cause of respondent no.3 that at the time of incident, the victim was below 18 years of age. The applicant sexually assaulted her when she was at her home. Victim has specifically stated about the act done by the applicant. The applicant has delivered a child out of the said sexual assault. Victim has made allegations

against accused no.1 and the applicant and to determine the fatherhood of the child, DNA testing of the applicant is required. Hence custodial interrogation of the applicant is required. The police has collected the DNA sample of accused no.1. To collect the DNA sample of the applicant his custodial interrogation is required hence they requested to reject the application.

5. The learned counsel for the applicant submits that the applicant will give DNA sample to the Investigating Officer as and when required.

6. I have heard all the learned counsel. Perused the F.I.R. and police papers produced on record.

7. Allegations against the applicant are made after 32 days in supplementary statement. In F.I.R. no name of the applicant is mentioned. The applicant is ready to cooperate with the Investigating Officer. If any incriminating material are found against the applicant, the prosecution can file the application for cancellation of bail against the applicant. There is delay of 32 days to file the complaint against the applicant, at the time of incident, the victim was more than 17 years old, no reason is given why she has not mentioned the name of applicant in the F.I.R. Considering these aspects, the custodial interrogation of the applicant is not required, hence I pass the following order :-

ORDER

(i) The application is allowed.

(ii) In the event of arrest of the applicant in connection with FIR No.0122 of 2023 registered with Kondalwadi Police Station, Tq. Biloli, Dist. Nanded, for the offence punishable under sections 376(3), 452 of the Indian Penal Code and sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, the applicant be released on executing personal bond in the sum of Rs.15,000/- with one surety of the like amount, on the following conditions :-

(a) the applicant shall attend the concerned police station as and when required by the Investigating Officer.

(b) as undertaking given by the learned counsel for applicant, applicant shall give DNA sample for testing to the Investigating Officer as and when required.

(c) Fees of Ms.Shilpa L. Awachar, learned counsel appointed to represent the cause of respondent no.3 be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[SHIVKUMAR DIGE, J.]