



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 1715 OF 2023

VINAYAK NILESH GAIKWAD

VERSUS

THE SUPERINTENDENT OF POLICE AND OTHERS

...

Mr. Rahul R. Karpe, Advocate for Applicant

Mr. D.B. Bhange, APP for Respondent Nos.1 & 2 – State

Mr. Milind B. Sandanshiv, Advocate for Respondent No.3

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27th FEBRUARY, 2024

PER COURT :

1. Applicant apprehends arrest in C.R. No.0379/2023, registered with Jamkhed Police Station, Ahmednagar, for offence punishable under Sections 363 and 376(2)(i)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. Mother of victim has lodged FIR on 16/08/2023, alleging that victim, minor of 14 years 11 months is abducted by some unknown person. During the course of investigation accused No.1 Aniket Sachin Ghodeswar was arrested and subsequently offences under Section 376(2)(i)(n) of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, were added in present crime. On 18/08/2023, in a supplementary statement victim stated that in April, 2023, applicant who is son of her maternal uncle, has committed forcible sexual intercourse with

her. This, act was repeated by him twice thereafter. However, she did not disclose it to anybody as they were living at the mercy of applicant's father i.e. her maternal uncle.

3. Heard learned APP for respondent Nos.1 and 2 – State, learned advocate for applicant and learned advocate for respondent No.3. Perused the investigation papers.

4. Learned advocate for respondent No.3 has supported the anticipatory bail application by pointing out written say filed by informant before trial Court, wherein she has stated that she has lodged FIR due to misunderstanding and narration in the FIR is not as per her say. Victim's statement was not recorded in her presence and it was not read over to her.

5. After registration of FIR for the first time victim's statement was recorded on 16/08/2023, where she did not name applicant and did not attribute any act to applicant. Applicant is implicated in present crime for the first time in the supplementary statement recorded on 18/08/2023. It is necessary to mention here that victim's statement under Section 164 of Cr.P.C. is recorded on 18/08/2023, wherein she has not named applicant and/or attributed any role to him.

6. Considering these aspects and the affidavit filed by informant in the trial Court, *prima facie*, there appears merit in the

argument of applicant that he is falsely implicated in present crime. Applicant's medical examination is done. Investigation appears to be on the verge of completion. Nothing is to be recovered from applicant. Therefore, pre-trial custodial detention of applicant in the facts of the present case is not necessary.

7. Application is, therefore, allowed by confirming interim protection granted to applicant by order dated 08/12/2023.

8. Till filing of charge-sheet, applicant shall attend concerned police station as and when called by investigating officer and shall co-operate in the investigation. Applicant shall not tamper prosecution evidence.

(NITIN B. SURYAWANSHI, J.)