

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.269 OF 2024

1. Sujata Ghogare @ Sujata Raju Gaigwali, &
2. Kajal Nuste @ Manisha Ramakant Nuste.Applicants
Versus
The State of Maharashtra & Anr. Respondents

Mr. Shailesh Kharat, Advocate for the Applicants.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd FEBRUARY, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R. No.512/2022 registered with Chaturshringi police station, Pune. Initially the FIR was registered under Section 363 of IPC. Thereafter, Sections 376, 376(n), 323, 504 of IPC and Sections 4, 6, 8 & 12 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act'), were added.

2. Heard Mr. Shailesh Kharat, learned counsel for the Applicants and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by the father of the victim on 24.11.2022. His daughter – the victim was aged 13 years & 6 months at the time of lodging of the FIR. Her date of birth was 1.6.2009. On 22.11.2022 the victim went missing. The informant and his family inquired with the relatives, friends etc. but she was not found and therefore he was convinced that somebody had kidnapped her. On these allegations, the FIR was lodged. Subsequently, the victim came to her parents' house in the night of 12.2.2023. She went to the police station with her father and gave her statement. In that statement she has described that on 22.11.2022 at about 12.30 p.m., the present Applicant No.1 and one Mahadeo Ghogare came to her house and told her to accompany them to a grocery shop. They took her on a motorcycle and they took her to the ST stand. The main accused Ganesh was standing there. The Applicant No.1 told

her that he was her son and they forced her to go with that boy. She was sent to their native village. She reached the village Danaje, Taluka-Paranda, District Osmanabad at about 8.00 p.m. on 22.11.2022. She was taken to the house of Applicant No.2, who was the sister of the main accused Ganesh. There were other family members of the Applicant No.2 in that house. She has further stated that the Applicant No.2 used to force her to do labour work. The money earned by her was forcibly take away from her. It is her specific case that the accused Ganesh used to beat her and used to commit forcible sexual intercourse with her against her wish. He repeated that act on many occasions. She was tortured. She was not allowed to talk with anybody else. She was beaten. She was not given the proper food. On 12.2.2023, the accused Ganesh again kept forcible physical relations with her. Finally the victim gathered courage. She went to Donaje. She requested an unknown person to help her. She took his phone and called her father, who sent Rs.500/- through mobile banking. Using that money she came to

Paranda in an S.T. bus and then returned to Pune at around 6.00 p.m. She informed everything to her father and on the next day she went to Chaturshringi police station and gave her statement.

4. Learned counsel for the Applicants submitted that these two Applicants are not involved with the main allegations. The story given by the victim is not believable. It was not possible for the Applicant No.1 to force the victim, who was above 13 years of age, to travel in an S.T. bus without the co-passengers noticing this force. He submitted that the victim and the main accused Ganesh had got married and there were photographs to corroborate that fact. The main accused Ganesh and the victim were staying separately. Therefore, the Applicant No.1 cannot be held responsible for the acts committed by the accused Ganesh. The Applicant No.1 is residing at Kadabgaon. She has no connection with the entire incident. He submitted that the victim has given her statement before the police under the influence of and as tutored by her father. Therefore, at this

stage, it would not be proper if the both the Applicants are arrested and subjected to custodial interrogation. Both of them are women.

5. Learned APP strongly opposed these submissions. She produced the statement of the victim recorded under Section 164 of Cr.PC. She submitted that said statement completely corroborates her earlier statement given before the police. The statement under Section 164 of Cr.PC. was recorded before the J.M.F.C., Pune on 13.4.2023.

6. I have considered these submissions. Even assuming for a moment that the accused Ganesh and the victim had really got married, it does not bring the offence outside the purview of the provisions of the POCSO Act. The victim was below 13 years & 9 months of age. Therefore, her consent is immaterial. In any case her statements before the police as well as before the Magistrate are consistent and specific that the accused Ganesh had kept the physical relations on many occasions against her will. Therefore, the main offence under Section 376(n) and also under the

POCSO Act are clearly made out. As far as the Applicant No.1 is concerned, there is a specific role attributed to her that she was the one who had taken the victim away from her house and had forced her to go with the accused Ganesh.

7. Considering the age of the victim, the Applicant No.1's participation in the act itself shows her involvement and she cannot be absolved of the allegations of helping the main accused. She has aided and abetted the main accused and, therefore, her act is covered under Section 16 read with 17 of the POCSO Act.

8. The Applicant No.2 appears to be seriously involved in the offence. The victim was taken to her house. The victim was tortured by her. The Applicant No.2 was forcing the victim to do the labour work. She was not given proper food. Her money was taken away. Therefore, her acts are also covered under Sections 16 & 17 of the POCSO Act.

9. The victim's statement shows that she had left the house of the Applicant No.2 where she was kept because of the continuous harassment.

10. The victim had taken help of a stranger at the ST Stand and then had returned back home. All these facts show how the victim had suffered. There is strong evidence against both the Applicants. Considering the seriousness and gravity of the offence, protection under Section 438 of Cr.P.C. cannot be extended to these Applicants. The Application is rejected.

(SARANG V. KOTWAL, J.)

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