

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

ANTICIPATORY BAIL APPLICATION NO.731 OF 2024

Vinit Vijaykumar Nair Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Gaurav Parkar, Advocate for the Applicant.
Ms. Rajeshree V. Newton, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.19/2024 registered at Khandeshwar Police Station, Navi Mumbai on 19.1.2024 under sections 363, 354 of IPC and under Sections 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2. Heard Mr. Gaurav Parkar, learned counsel for the Applicant and Ms. Rajeshree Newton, learned APP for the Respondent-State.

3. The FIR is lodged by the mother of the victim. As per the FIR, the victim was 16 years of age at the time of lodging of the FIR. Her date of birth is 9.2.2007. She was studying in 12th standard at Kharghar. On 7.1.2024, the informant, her husband and her other two children had gone to their native place. The victim had stayed at home because of her examination. On 10.1.2024, the informant and other family members came back. At that time the victim was seen under some mental pressure. On 15.1.2024 she had gone to her tuition class but she did not return on time. The informant went to the tuition class. She came to know that the victim had not attended her classes. The informant called her telephonically and asked her to return home. When the victim came back, the informant took her in confidence and asked about her difficulty. The victim told her that she had gone to a garden with the Applicant. In 2019, the Applicant had met her and was trying to get in touch with her. He had told her that he liked her. The victim stopped talking to the Applicant; but about two months prior to the FIR, he again contacted her and

tried to come closer. On one occasion, he had asked her to accompany him to a lawn but she had refused. On the next occasion, on 9.1.2024 he took the victim on his two-wheeler behind Karnala Sports. After that he took her to a house. There was nobody in the house. The Applicant gave her chocolate and then hugged her. The victim resisted, but, he forcibly kissed her and pressed her chest. She got scared and shouted. She insisted that the Applicant should leave her at her house. Therefore, at about 12.30 p.m. he left her to her house. On 10.1.2024, again he called her and told her to meet him at CIDCO garden. He threatened her that if she did not come to meet him, he would visit her house. She got scared and again she met him; when again the Applicant took her to that house and repeated what he had done on the previous occasion and again she was left at her house. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the incident did not happen. There is delay in lodging the FIR. The incident was dated 9th and 10th January, 2024 and the

FIR is lodged on 19th January, 2024. He submitted that the mother of the victim found out that the victim was not attending her tuition class and, therefore, to shift the blame, the victim had wrongly blamed the Applicant.

5. Learned APP opposed these submissions. She produced the investigation papers before me. There is a statement of the victim recorded by the police and there is a statement of the victim recorded under Section 164 of Cr.PC. Both these statements are consistent. She has narrated how the Applicant had committed that offence in a house when there was no one else in that house. Learned APP on the basis of these statements, opposed this application.

6. I have considered these submissions. There are consistent statements of the informant and the victim. The victim has given her statement under Section 164 of Cr.PC.. It is not the case of the Applicant that he was having any affair with the victim. There is absolutely no reason brought out by the Applicant as to why the victim would implicate him falsely.

7. Even otherwise, there is big age difference between the victim and the Applicant. Therefore, at this stage, there is no reason to disbelieve the victim. The Applicant is a 32 year old man. First time he had approached the victim in the year 2019 when the informant would be around 12 years of age. All this shows that the Applicant has committed the offence under POCSO Act and under Section 354 of IPC. The victim is of tender age. At this stage, there is sufficient material against the Applicant.

8. Considering the gravity of the offence, the protection under Section 438 of Cr.P.C. cannot be granted to the Applicant. The Application is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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