IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2862 OF 2023

Niraj Gopaldutt Bhatt .....Applicant
Versus
The State of Maharashtra & Anr. .... Respondents

Mr. Sandip Karnik, Advocate a/w Rohan Janaradhanan, Prachi Gharat i/b. Rex Legalis for the Applicant.

Ms. Sharmila S. Kaushik, APP for the Respondent No.1-State.

Mr. D.N. Salvi, Advocate a/w. Sahil D. Salvi, Sagar Redkar, Narendra L. Kalpoth, for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No.45/2022 registered at Turbhe Police Station, Navi Mumbai on 28.3.2022 under Section 354 of IPC and under Sections 8 & 10 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act')

2. The FIR is lodged by the mother of the victim. She was residing with the victim and her other son aged 15 years. Her husband passed away on 14.4.2021 due to

Corona. The first informant was a director in a private limited company. The victim was in severe depression and before lodging the FIR it was noticed that she used to wake up from her sleep suddenly and used to shout. She was taken to a specialist clinic on 25.3.2022. She was again taken to the clinic on 28.3.2022. At that time, the Specialist called the informant and told her that the Applicant, who was the paternal uncle of the victim had gagged her mouth and had pressed her chest and, therefore, the victim was under depression. The informant made inquiries with the victim. At that time, she told the informant that on 4.5.2021 and 7.5.2021, the Applicant had committed that act when nobody was around. The victim had got scared. The victim's father had passed away recently and, therefore, everybody was under pressure and, therefore, she did not inform it to anybody at that time. After this fact was disclosed to the informant, she approached the police station and lodged this FIR.

3. At the first instance, the Applicant preferred Anticipatory Bail Application No.1289/2022 before the Court of Session. It was allowed by the Additional Sessions Judge-6 Thane vide his order dated 8.4.2022. Thereafter the charge-sheet was filed. The Applicant was formally arrested and released on bail. After that the informant approached this Court for cancellation of the anticipatory bail order on the ground that the first informant was not heard while deciding the anticipatory bail application by the Sessions Court. Said application was Criminal Application No.225/2022 before this Court. This Court (Coram : S.M. Modak, J.) vide order dated 21.7.2023 set aside the order dated 8.4.2022 passed by the Additional Sessions Judge-6, Thane in A.B.A. No.1289/2022 and directed him to decide it afresh after hearing all the parties including the first informant. However, the protection of anticipatory bail was continued till decision was to be made afresh by the said Court.

4. In the meantime, the Applicant wanted to travel abroad and, therefore, he made an application before the Additional Sessions Judge, Belapur, Navi Mumbai at Exhibit-34 in Special Case No.476/2023. Learned Judge vide his order dated 9.8.2023 permitted the Applicant to travel abroad between August, 2023 to April, 2024 on certain conditions. The major condition was that he had to give details of his travel, details about his place of stay, his contact number. He was directed to give an undertaking that as and when he was directed to remain present he would remain present without any excuse. It was also directed that the Applicant would not take any adjournment on his anticipatory bail application which had to be decided within a month from 1.8.2023. This order was passed on 9.8.2023. After this order was passed, the Applicant went abroad on the High Seas in connection with his job with the Merchant Navy.

5. After this, the anticipatory bail application was decided afresh by the learned Additional Sessions Judge, Belapur on 25.9.2023 and this time the Application was

rejected. In these circumstances, the Applicant has approached this Court for protection under Section 438 of Cr.P.C. in the nature of anticipatory bail order.

6. Heard Shri Sandip Karnik, learned counsel for the Applicant, Ms. Sharmila Kaushik, learned APP for the Respondent No.1-State and Mr. D.N. Salvi, learned counsel for Respondent No.2.

7. Learned counsel for the Applicant submitted that there is a long history of disputes between the parties and the FIR is a result of such disputes. He submitted that the disputes started in the year 2011. In that year the informant's husband (the Applicant's brother) had filed a complaint against the informant for giving threats about lodging false cases. After that there was some sort of settlement between the parties. In the year 2018, the company obtained loan of Rs.2,35,00,000/- where the informant was a director. On 14.4.2021, the informant's husband passed away. On 19.5.2021, the informant was made a director of the main company of the family. On

28.9.2021, an amount of Rs.2,85,00,000/- was received by the company in the form of insurance amount. The informant transferred that amount for her personal use. On 21.3.2022 the informant's father-in-law prepared a resignation letter but without his consent that letters was put up by the first informant before the Board of Directors. Therefore, the informant's father-in-law sent email to the Company Secretary on 23.3.2022 and then to the ROC on 24.3.2022. In this background, the FIR came to be lodged on 28.3.2022 about the incident which had allegedly taken place in May, 2021.

8. Learned counsel for the Applicant, therefore, submitted that all these dates show that when the informant got into trouble because of her financial affairs in the company and regarding the resignation letter of her father-in-law, she resorted to filing of this *malafide* complaint against the Applicant to pressurize her father-in-law. He further submitted that the charge-sheet in this case is already filed. The Applicant is formally arrested and is released on

bail and, therefore, his custodial interrogation is not necessary at all. The Applicant is traveling in connection with his job with the Merchant Navy. The Applicant has no intention to evade the due process of law.

9. Learned counsel submitted that the Applicant's wife had tried to give his details about his travel abroad before the Court but because of the urgency the Applicant had to leave for his job immediately. There was no intention to flout any direction passed by the Sessions Court. He submitted that the incident had purportedly occurred in May, 2021 and the FIR is lodged much belatedly in March, 2022. The Applicant's custodial interrogation is absolutely unnecessary. Since the complaint is filed with *malafide* intention, this is a fit case in which the Applicant can be protected by an order under Section 438 of Cr.P.C.

10. Learned counsel for the first informant strongly opposed these submissions. He submitted that on the date of incident, the informant and the victim were staying with the informant's father-in-law at Vashi. The Applicant had visited

their house because of the death of the informant's husband. The delay in lodging the FIR is explained because the victim could not inform the other family members about the incident. Only when her performance in the examination went down to an alarming extent and since she displayed signs of mental disturbance, the incident came to light.

11. As far as the disputes referred to by learned counsel for the Applicant are concerned, learned counsel for the informant submitted that in respect of those disputes or for the allegations of financial mismanagement, no police complaint is filed against the first informant. He submitted that the Applicant was permitted to travel abroad on certain conditions. He had to provide the details of his travel, stay, contact number and importantly he had to file an undertaking to remain present as and when directed. The Applicant has not followed any of these directions and, therefore, on this ground alone the present Application deserves to be dismissed.

12. Learned APP supported the contentions of learned counsel for the informant; and in addition submitted that the informant's and victim's statements are recorded under Section 164 of Cr.P.C. Both of them have supported the FIR. Therefore, there is a strong case against the present Applicant.

13. Learned counsel for the informant relied on the observations of the Hon'ble Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and others** decided on 21.10.2022 in Criminal Appeal No.1834/2022; in which, it was held that the necessity of custodial interrogation cannot be the only consideration for deciding the anticipatory bail application but the gravity of the offence also cannot be ignored.

14. I have considered these submissions. As far as the delay in lodging the FIR is concerned, in these cases the delay may not play an important role to indicate falsity of the allegations. In the present case, the delay is explained by the informant that the victim did not disclose about the

incident immediately to anybody because everybody was in grief because of death of the informant's husband. The incident came to light only after the victim started suffering mental trauma which resulted in lowering her academic performance and affecting her sleep as narrated above. Therefore, in the present case the delay in lodging the FIR may not be of much importance.

15. As far as the dispute, referred to by learned counsel for the Applicant, is concerned the dispute was in the year 2011 between the informant and her husband. Since then they were staying together amicably till the husband passed away in 2021. There is nothing further to show any marital discord between the couple between 2011 to 2021.

16. As far as the affairs of the company are concerned, admittedly the present Applicant was never a director of those companies and, therefore, it is a little far-fetched to allege that the informant filed complaint against

the Applicant though he had no connection with the affairs of the company.

17. The Applicant's case is that his father had not actually resigned and his resignation letter was misused by the informant. However, this allegation against the informant does not have any bearing on the allegations against the Applicant.

18. Learned counsel for the Applicant tried to submit that his father (the informant's father-in-law) had sent an email on 23rd and 24th March, 2022 and immediately after a short time the FIR was lodged by the first informant on 28.3.2022. There is nothing to show as submitted by learned counsel for the informant that the informant was aware about those emails sent to ROC and the Company Secretary. Therefore, at this stage, it is very difficult to observe that the FIR was a result of malafide intentions on the part of the informant and for that purpose she had used her minor daughter.

19. As rightly submitted by learned counsel for the informant, the Applicant has not followed the directions of the Sessions Court, when he was granted permission to travel abroad. The Applicant has not given any details of his travel, stay and contact number. He has not even given the undertaking to remain present if he was directed to remain present. He has violated those conditions. This is an additional ground why his anticipatory bail cannot be considered leniently.

20. As submitted by learned APP, there are statements of the first informant and the victim recorded under Section 164 of Cr.P.C. which corroborate the FIR and which bind them.

21. Learned counsel for the informant has rightly relied on the observations of the Hon’ble Supreme Court in the case of Sumitha Pradeep (Supra). In that case the Hon’ble Supreme Court has observed that the custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an

application seeking anticipatory bail. There may be cases in which custodial interrogation of the accused may not be required but that does not mean that *prima facie* case against the accused should be ignored or overlooked and he should be granted anticipatory bail. First and foremost thing that the Court hearing an anticipatory bail should consider is the *prima facie* case put up against the accused. Thereafter the nature of the offence should be looked into along with severity of the punishment.

. In the present case, there is a strong prima facie case against the Applicant and undoubtedly the nature of the offence is quite grave. The offence assumes more seriousness because it is an aggravated sexual assault because under Section 9 (l) of POCSO Act it was committed more than once.

22. While it is true that the charge-sheet is already filed and the Applicant was formally arrested and released on bail. However, execution of the bail bonds cannot assume importance in view of the fact that subsequently this Court

(Coram: S.M. Modak, J.) had set aside the order granting anticipatory bail to the present Applicant and thus vide the said order had directed the Sessions Court to decide the anticipatory bail application afresh.

23. Considering this discussion, this Application cannot be allowed. The Applicant cannot be protected under Section 438 of Cr.P.C. The Application is rejected.

(SARANG V. KOTWAL, J.)