

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

ANTICIPATORY BAIL APPLICATION NO. 489 OF 2024

Novendu Nilmoni Sinha	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Nitin U. Telgaonkar for the Applicant.
Mr. R. V. Newton, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 15th OCTOBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. Since offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) also registered in the present case, the victim was added as respondent No.2.

3. In the order dated 21st February 2024, granting interim relief to the applicant, it was observed in paragraph 6 that according to the Investigating Officer, the respondent No.2 was aware about the proceeding and she had expressed her desire to engage a private advocate. This Court found *prima facie* case in favour of the applicant and hence, interim relief was granted on 21st February 2024.

4. It was further observed in the order dated 19th September 2024 that the respondent No.2 was served and that she desired to engage an advocate on her own, without asking for any legal-aid. In the said order dated 19th September 2024, it was further recorded that nobody was present on behalf of the respondent No.2 and therefore, in order to give one more chance to the respondent No.2, the hearing on the application was adjourned and the interim order was continued.

5. Even today, when the application is called out for hearing, neither the respondent No.2 is present in-person nor has she engaged any advocate. In such circumstances, when it is clear that the respondent No.2 is aware about the pendency of the present application and she has herself chosen not to participate in the proceeding, this Court is of the opinion that this application can be heard and disposed of.

6. The learned counsel for the applicant reiterates the contentions that were raised when the interim order was granted on 21st February 2024. He submits that the applicant has cooperated with the investigation and abided by directions given in the interim order. It is submitted that the applicant undertakes to cooperate with the concerned trial Court for expeditious disposal of the case and therefore, this Court may consider confirming the interim order and allowing the application.

7. The learned APP submits that the allegations made against

the applicant are serious, which have led to registration of the FIR under the IPC as well as the POCSO Act. It is submitted that this Court may consider the grievance of respondent No.2, when the FIR was registered, which indicates the existence of the ingredients of the offences registered against the applicant.

8. It is to be noted that while granting interim relief to the applicant by order dated 21st February 2024 passed by this Court (Coram: Sarang V. Kotwal, J.) the following observations were made :

“4. The FIR is lodged by the victim herself on 21/03/2022. She was 16 years of age at the time of lodging of the FIR. The FIR describes the troubled marriages of her mother. The Applicant was her mother’s second husband and thus stepfather of the victim. The FIR refers to two incidents. One was in the year 2016. The date and other details are not mentioned, and the other incident is from January 2019. On these two occasions, the Applicant had committed an act attracting the provisions of POCSO.

5. Learned counsel for the Applicant relied on the screenshots of the WhatsApp messages exchanged between the victim and the Applicant. All these messages are after January 2019. All these messages show that their relationship was cordial and normal. Learned counsel for the Applicant submitted that in view of these messages it is not possible to believe that the incidents as described in the FIR, would have taken place.”

9. The above quoted reasons hold good, even today, for allowing the application, particularly when the applicant has cooperated with the investigation in terms of the directions issued by this Court, while granting interim relief. The backdrop of the

matrimonial disputes between the applicant (who is the stepfather of the informant) and his wife, culminating in divorce, indicates that the FIR could have been registered in order to embroil the applicant in such a serious matter.

10. This Court finds that despite repeated opportunities being granted to the informant, she has chosen not to appear before this Court in the context of the present application. The material on record does make out a *prima facie* case in favour of the applicant and in the light of the fact that he has cooperated with the investigation, the interim order deserves to be confirmed and the application deserves to be allowed.

11. Accordingly, interim order date 21st February 2024 is confirmed and the application is allowed.

12. The applicant shall cooperate with the trial Court, during the course of trial. He shall attend the proceedings on each and every date before the aforesaid Court, unless exempted by the said Court, for reasons to be recorded in writing.

13. The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.

14. The application is disposed of.

MANISH PITALE, J.