

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.929 OF 2024

Ayyaj Fakruddinbhai Pimpalnerwala	...	Applicant
Vs.		
State of Maharashtra and another	...	Respondents

Mr. Rameshwar N. Gite a/w. Mr. Sushant N. Tare and Mr. Rohit Gorade for Applicant.

Mr. Babu Vitthalrao Holambe-Patil, APP for Respondent-State.

Ms. Keral Mehta for Respondent No.2.

CORAM : MANISH PITALE, J.

DATE : JULY 12, 2024

P.C. :

1. Heard Mr. Gite, learned counsel for the applicant, Mr. Holambe-Patil, learned APP for the respondent-State and Ms. Mehta, learned counsel appointed for appearing on behalf of the respondent No.2 (original informant - victim).

2. The present anticipatory bail application is filed in the context of FIR No.0356 of 2023 dated 11.12.2023 registered at Satpur Police Station, District - Nashik, for various offences under the Indian Penal Code, 1860 (IPC), particularly Sections 354 and 506 thereof, as also under the provisions of Prevention of Children from Sexual Offences Act, 2012 (POCSO Act) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act).

3. At the outset, the learned counsel for the applicant invited attention of this Court to the order 30.01.2024 passed by this Court (Coram : M. S. Karnik, J.), whereby interim relief was granted in favour of the applicant after recording that a *prima facie* case was made out by

the applicant in his favour, with a direction to the applicant to co-operate with the investigation.

4. Initially, the present proceeding was filed as an appeal under the provisions of the SC & ST Act, but subsequently, it was converted into the present application on the basis of the settled position of law that when offences under the POCSO Act are also registered in a case, the POCSO Act, being a subsequent and special legislation, a regular bail application would be maintainable.

5. The learned counsel for the applicant submits that after the interim order was passed, the applicant has co-operated with the investigation. The charge-sheet is now filed and therefore, this Court may consider allowing the present application.

6. The learned APP has appeared for State and he relies upon the material on record to contend that specific overt acts have been alleged against the applicant showing his involvement in the aforesaid offences. The learned counsel appearing for the respondent No.2 (informant) also supports the submissions made by the learned APP.

7. The statement of the respondent No.2 (informant), which led to registration of the FIR and her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) do indicate certain overt acts attributable to the applicant.

8. The material on record indicates that the mother of the respondent No.2 (informant) is having matrimonial disputes with her husband and that they have been living separately. Respondent No.2 (informant) has been living with her mother and it appears that there was intimacy between the mother of the respondent No.2 (informant) and the applicant. This is also evident from the statements of the respondent

No.2 (informant) herself as regards the manner in which the applicant and the mother of the respondent No.2 (informant) were having physical relationship. This aspect has been specifically noted in the order dated 30.01.2024 passed by this Court and a *prima facie* finding has been rendered that in the backdrop of such a relationship between the applicant and the mother of the respondent No.2 (informant), a possibility of false implication cannot be ruled out, particularly because the respondent No.2 (informant), at the time of registration of the FIR, was aged about 17 years and 5 months.

9. This Court is of the opinion that there is indeed material to support the said *prima facie* finding given by this Court about the possibility of false implication in the backdrop of the relationship between the applicant and the mother of the respondent No.2 (informant), as also the fact that the mother is having matrimonial disputes with her husband i.e. the father of the respondent No.2 (informant).

10. The applicant appears to have co-operated with the investigation. Considering the nature of allegations as regards the manner in which the applicant had allegedly inappropriately touched the respondent No.2 (informant), it cannot be said that physical custody of the applicant is necessary for any medical examination. Hence, no purpose would be served by rejecting the application, which may lead to the applicant being taken into custody.

11. In view of the above, this Court is inclined to allow the application and to make the interim order absolute. Accordingly, the application is allowed and the interim order dated 30.01.2024 is made absolute, subject to the applicant not contacting the respondent No.2 (informant) in any manner. The applicant shall not influence the informant, witnesses or any other person concerned with the case. The

applicant shall attend the proceedings before the trial Court on each and every date, except when specifically exempted by the trial Court.

12. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab