

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1332 OF 2024

Chirag Arora s/o H.L. Arora

...Applicant

Versus

State of Maharashtra & Anr.

...Respondents

- Ms. Shahrukh Alam a/w Ms. Rebecca Gonsalvez and Ms. Aditi Prabhu, for Applicant.
- Ms. Megha Sumit Bajoria, APP, for Respondent No.1 – State.
- Ms. A. Rastogi a/w Ms. Devyani Kulkarni and Ms. Sanskruti Yagnik, for Respondent No.2.

CORAM : MANISH PITALE, J.

DATE : 13th JUNE, 2024.

P. C. :

1. The applicant seeks anticipatory bail in the context of Special POCSO Case No. 441 of 2023, arising from First Information Report No.0210 of 2021 (FIR) registered at Yerwada Police Station for offences under Sections 376, 376(2)(n), 323, 504, 506 of Indian Penal Code (IPC) along with offences Under Sections 4, 5(l), 5(n) and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The principal contention raised on behalf of the applicant is that he is sought to be falsely implicated by the informant i.e. his own wife for having sexually abused their daughter. It is the case of the applicant that the allegations leveled against him in that context are belated and an afterthought,

SHRIKANT
SHRINIVAS
MALANI

Digitally signed
by SHRIKANT
SHRINIVAS
MALANI
Date: 2024.06.13
14:42:35 +0530

in the backdrop of a bitter matrimonial dispute between the parties.

3. It would be appropriate to refer to the chronology of events before adverting to the submissions made on behalf of the parties.

4. The applicant and respondent No.2 i.e. the informant got married on 10th February, 2015 at Faridabad, Haryana. They went to the United States of America (USA) and they were residing together at New Jersey, USA. On 24th June, 2016, a daughter was born to them, but it appears that subsequently around the years 2018-2019, the matrimonial relationship between them deteriorated. On 29th December, 2019, an incident occurred at their residence in New Jersey (USA), wherein the respondent No.2 called 911. When the concerned authorities reached the residence of the applicant and respondent No.2, it was recorded that there was verbal dispute between the two and during the course of the dispute, the applicant sought to forcibly take the mobile phone of respondent No.2. It was recorded that neither party exhibited any injury. It was recorded that the respondent No.2 stated that she would be speaking to her family, that the parties would undertake marriage counseling and that this was the first incident of domestic violence reported to the concerned authority. Subsequently, the respondent No.2 on the next day i.e. 30th December, 2019, approached the authorities and improved her version by stating that the applicant had grabbed her from behind and pushed her

down. She indicated that she did not wish to apply for a temporary restraint order against the applicant and that she would be leaving for India in the coming weeks. Thereupon, respondent No.2 returned to India.

5. As the matrimonial relationship between the parties had taken a turn for the worse, it appears that the respondent No.2 was inclined to seek divorce and this is evident from the fact that after the applicant, having come to India returned back to the USA, on 18th January, 2020, respondent No.2 sent a notice to the applicant seeking divorce by mutual consent. In this notice, she annexed the proposed consent terms. She claimed permanent custody of the daughter and about Rs.2.77 Crores from the applicant, apart from making other demands. It is significant to note that there was not even a whisper of any allegation of sexual abuse of the daughter at the hands of the applicant.

6. In January, 2020, there was exchange of e-mails between the applicant and respondent No.2, wherein the applicant requested for meeting his daughter. In this backdrop, the brother of respondent No.2 sent an e-mail to the applicant, stating that he should agree for divorce by mutual consent and that he could have visitation rights with the daughter. Here again, there was no allegation of sexual abuse of the daughter. On 29th January, 2020, the respondent No.2 sent an e-mail to the employer of the applicant, claiming that

the applicant had been harassing her. Again, there was no allegation of sexual abuse of the daughter. Thereafter, in June, 2020, the applicant filed a Habeas Corpus Petition bearing Writ Petition (Civil) No. 479 of 2020, before the Supreme Court in respect of the whereabouts of his daughter. On 05th June, 2020, the petition was withdrawn with liberty to avail appropriate remedies. In this backdrop, the applicant filed Criminal Writ Petition No.92 of 2021 in this Court invoking the writ of Habeas Corpus. On 20th July, 2020, time was sought on behalf of respondent No.2. This Court observed that she would make an endeavor to show the daughter to the applicant through video conferencing. By orders dated 03rd September, 2020 and 10th September, 2020, this Court directed that limited access through video conferencing would be provided to the applicant, so that he would be able to interact with his daughter.

7. It is at this stage that, on 20th October, 2020, the respondent No.2 filed her reply in the said writ petition and for the first time made allegations of sexual abuse of the daughter at the hands of the applicant. On 24th October, 2020, she lodged a complaint with Yerwada Police Station, Pune, making allegations of sexual abuse against the applicant. On 05th November, 2020, this Court in the said writ petition directed the respondent No.2 to give virtual access to the applicant, so that he could interact with the daughter. In the same month i.e. November, 2020, the respondent No.2 filed

proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005, before the Court of Magistrate in Pune.

8. On 27th November, 2020, the applicant came to India and joined the investigation with the police station at Yerwada, where he was interrogated by the investigating officer and women's cell of the said police station. This assertion has been specifically made in the present application and the learned APP, on instructions, stated that the applicant had indeed appeared before the Police Station at Yerwada. In December, 2020, the respondent No.2 filed petitions before the Family Court at Pune, seeking divorce as well as custody of the daughter. She also filed an application for interim custody. In January, 2021, the applicant went back to the USA. On 08th June, 2021, the Division Bench of this Court disposed of the aforesaid Habeas Corpus writ petition of the applicant in the light of the proceedings for custody of the child initiated before the Family Court at Pune by the respondent No.2. But, while doing so, this Court continued the orders passed earlier granting access to the applicant to interact with his daughter through video conferencing.

9. In the meanwhile, on 12th April, 2024, the Yerwada Police Station registered the said FIR No.0210 of 2021 for the offences under IPC and POCSO Act. The respondent no.2 also filed FIR bearing No.0315 of 2021 against the applicant making identical allegations in Police Station

Mujesar, Faridabad in May, 2021. The applicant has specifically stated in the application that between 26th May, 2021 to 31st July, 2021, he joined the investigation, as he traveled back to India and appeared before the concerned police station at Mujesar, Faridabad.

10. In this backdrop, on August, 2021, the applicant filed a petition before the Supreme Court seeking transfer and clubbing of the FIR at Faridabad with the FIR registered at Yerwada Police Station, Pune in Maharashtra. The parties were referred to mediation in December, 2021, but the mediation failed. On 09th January, 2022, the respondent No.2 caused FIR No.9 of 2022 to be registered against the applicant at the Police Station Jalgaon City under Sections 498-A, 406, 323, 504, 506 read with 34 of the IPC.

11. On 21st February, 2022, the Supreme Court disposed of the writ petition directing the FIR registered at Faridabad to be transferred to the Yerwada Police Station, Pune, further directing that the investigation would be monitored by a Woman Police Officer of the rank of the Assistant Commissioner of Police. The applicant has placed on record email sent to the investigating officer along with the documents attached to the emails, in order to demonstrate that he would cooperating with the investigation. Since the applicant was in USA and the investigation was to be undertaken, a Look Our

Circular was issued against the applicant at the request of the investigator. In May, 2023, charge-sheet was filed in the context of the aforesaid FIR No.0210 of 2021.

12. It is relevant to note here that in June, 2022, the applicant had filed Criminal Writ Petition No.3028 of 2022 seeking quashing of FIR No.0210 of 2021 registered at Yerwada Police Station, as also FIR No.0315 of 2021, which was transferred from Police Station Mujesar Faridabad to Yerwada Police Station at Pune. This Court disposed of the said writ petition by an order dated 21st June, 2023, in the light of the fact that in the meanwhile charge-sheet was filed and that the applicant would be at liberty to approach the Trial Court to seek discharge. The applicant challenged this order by filing Special Leave Petition (Criminal) No.11474 of 2023, before the Supreme Court. The Special Leave Petition was disposed of and while doing so, the Supreme Court directed that as an interim measure no coercive action be taken against the applicant for a period of four weeks.

13. Thereupon, the applicant filed an application for grant of anticipatory bail before the Court of Additional Sessions Judge, Pune. The same was dismissed by an order dated 02nd May, 2024, by observing that the charge-sheet is already on record and there does not appear to be a reasonable apprehension of arrest. It was observed that the applicant could appear before

the Competent Court and follow due procedure to participate in the trial. In this backdrop, the applicant filed the instant application, wherein, by order dated 05th September, 2023, this Court granted leave to amend to the applicant to add a prayer for interim relief. The amendment was carried out. But, this Court took up the application for final disposal in the light of the fact that the learned APP appearing for the State and the learned counsel appearing for respondent No.2 were ready for hearing in the application.

14. Ms. Shahrukh Alam, learned counsel appearing for the applicant referred to the documents on record as well as the copy of the complete charge-sheet tendered in Court. She invited attention of this Court to various documents in the context of the chronology of events noted hereinabove, to emphasize that although the allegation of sexual abuse of the daughter against the applicant is indeed a serious matter, but the respondent No.2 did not make any such allegations at the very outset when disputes arose between the applicant and respondent No.2. It was submitted that the allegations pertaining to sexual abuse of the daughter are clearly an afterthought, belated and raised in the backdrop of the bitter matrimonial dispute between the parties. On this basis, it was submitted that, on the face of it, the allegations can be said to be concocted, only with a view to pressurize the applicant into agreeing to the demands of respondent No.2 for finally settling the matrimonial dispute on her terms. It was submitted that the respondent No.2

filed various proceedings against the applicant and his family members, so as to pressurize him and the allegation of sexual abuse against the daughter, is also part of such a strategy.

15. The learned counsel for the applicant submitted that the documents on record manifesting the dispute between the parties reported to an authority for the first time, is the recording of the concerned authority in New Jersey, USA, upon the respondent No.2 calling 911 on 29th December, 2019. It was submitted that the concerned authority in USA recorded the nature of grievance raised by the respondent No.2 and there was not even a whisper of sexual abuse of the daughter. Thereupon, the learned counsel for the applicant referred to the various documents on record, including the notice issued on behalf of respondent No.2 for divorce by mutual consent and it was submitted that the respondent No.2, for the first time, on 20th October, 2020, made the allegation of sexual abuse against the applicant in the context of the daughter. This was in the reply to the Habeas Corpus writ petition filed by the applicant and that too after this Court issued directions for virtual access to the applicant to interact with the daughter.

16. It was submitted that the delay of about 10 months in raising such a serious matter demonstrates that the allegation is not genuine and it is cooked up, only to harass the applicant. It was further submitted that the

daughter was examined by a doctor at the behest respondent No.2 and the report prepared pursuant thereto, was also an attempt on the part of respondent No.2 to create material against the applicant. It was submitted that even in the said report, nothing material can be inferred against the applicant. It was further submitted that the statement of the daughter recorded by the police on 24th July, 2021 was at variance with the subsequent statement recorded on 19th March, 2023. In the first statement, the daughter did not make any reference to sexual abuse, but in the subsequent statement recorded after about 1 year and 8 months shows material improvements, indicating that the daughter was tutored against the applicant i.e. her father. On this basis, it was submitted that there is no substance in the allegations made against the applicant.

17. The learned counsel for the applicant then referred to exchange of emails dated 14th November, 2019 between the applicant and respondent No.2, wherein references were made as to the manner in which the applicant used to clean the private part of his daughter, while bathing her. After referring to the same, it was submitted that the said emails clearly indicated the concern of the applicant as regards the health and hygiene of his daughter and that such emails did not indicate any sexual abuse of the daughter and further that even the respondent No.2 in the emails did not make such an allegation.

18. It was submitted that the applicant had appeared before the Police Station at Yerwada, Pune in Maharashtra as well as the Police Station Mujesar, Faridabad in Haryana, thereby demonstrating that he has always cooperated with the investigating authority. It was further submitted that the applicant is always ready to cooperate with the investigation, but since there is not even *prima facie* substance in the allegations concerning sexual abuse, this Court may consider granting anticipatory bail on appropriate conditions, so that the applicant can appear before the concerned Court and cooperate with the investigating authority also.

19. It was further submitted that a look out circular and the non-bailable warrants issued against the applicant had made it difficult for him to come to India, despite the fact that the father of the applicant is ill. The learned counsel for the applicant relied upon order of the Supreme Court in the case of *Ashok Kumar Vs. State of Union Territory Chandigarh* (dated 01st March, 2024 passed in Special Leave Petition (Criminal) No. 9949 of 2023), judgments of Supreme Court in the case of *Siddharth Vs. State of Uttar Pradesh and another¹* and *Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office* (dated 16th May, 2024 passed in Criminal Appeal No.2608 of 2024 arising out of Special Leave Petition (Criminal) No. 121 of 2024).

1 (2022) 1 SCC 676

20. On the other hand, learned APP submitted that considering the seriousness of the allegations leveled against the applicant as regards sexual abuse of his own daughter, this Court may not grant any relief in the present application. It was submitted that the specific allegations pertaining to the sexual abuse of the daughter may be appreciated independent of the matrimonial dispute between the applicant and respondent No.2. By referring to the aforesaid emails exchanged on 14th November, 2019, the learned APP submitted that the ingredients of the offences under the provisions of the POCSO Act are clearly made out from the contents of the said emails exchanged between the parties. It was further submitted that in such cases physical presence and medical examination of the applicant / accused is necessary, but the applicant has not cooperated with the investigation and he has not remained present before the investigating officer. Merely sending emails and attached documents to the investigating officer does not show cooperation with the investigation process.

21. It was further submitted that even if the claims of the applicant of having remained present initially before the Yerwada Police Station, Pune are accepted, after the proceedings pending before the Supreme Court were disposed of, the applicant has not cooperated with the investigation. It was further submitted that orders of the Supreme Court, upon which the learned

counsel for the applicant has placed reliance, were passed in a different set of circumstances and they are not applicable to the facts of the present case.

22. The learned counsel for respondent No.2 supported the submissions made by the learned APP and further added that medical reports pertaining to the treatment given to the daughter during the period of time when she was in USA show that the daughter was suffering from infection in her vagina. This also indicated the complicity of the applicant as regards the allegation of sexual abuse of the daughter. Much emphasis was placed on the aforesaid emails exchanged dated 14th November, 2019. It was submitted that the aforesaid emails explicitly demonstrated that the allegation regarding sexual abuse of his daughter was not made for the first time on behalf of respondent No.2 on 20th October, 2020, in the reply filed before this Court in the Habeas Corpus writ petition.

23. It was submitted that no reference was made to the said allegation in the notice dated 18th January, 2020, sent on behalf of respondent No.2 proposing divorce by mutual consent, for the reason that in the said notice and the proposed consent terms, the respondent No.2 had clearly stated that the permanent custody of the daughter would be with respondent No.2. It was only when orders were passed directing access to the applicant through video conferencing that the respondent No.2 thought it fit to raise the aforesaid

issue, fearing further mental trauma and harassment to the daughter.

24. It was submitted that the daughter herself had stated before the police as regards the actions of her father i.e. the applicant, indicating child sexual abuse. Reliance was placed on the report given by the doctor, who examined the daughter. It was further submitted that the applicant is merely sitting in USA and seeking protection from this Court without joining investigation. In view of the serious allegations supported by sufficient material against the applicant, the present application may be dismissed, so that the applicant is brought before the Court and the investigating agency in order to complete the investigation in a proper manner.

25. This Court has perused the application and the documents filed therewith, as also the contents of the charge-sheet, copy of which is tendered in Court. The learned counsel were heard in detail, since the allegation of sexual abuse is in the context of the daughter and her own father i.e. the applicant is alleged to have committed such an act.

26. There can be no doubt about the fact that the allegations are indeed serious in nature. But, this is the very factor that would require a concerned mother to immediately raise the said issue of sexual abuse of the daughter, particularly when disputes arose between the applicant and respondent No.2. There is no doubt about the fact that the applicant and

respondent No.2 are engaged in a bitter matrimonial dispute.

27. The first manifestation of the same was on 29th December, 2019, when the respondent No.2 dialed 911 to call the authorities in New Jersey, USA. The documents placed on record show that the concerned authority recorded the dispute on the said date as a verbal dispute. On the next day, the respondent No.2 improved her version before the authority by alleging grabbing and physical assault by the applicant. Yet, she refused to opt for a temporary restraintment order against the applicant, indicating that she would be leaving for India. At this stage also there was no whisper of sexual abuse of the daughter, although it is recorded in the said document that the disputes between the applicant and respondent No.2 occurred in the presence of the daughter. Therefore, the first public document available in the context of the dispute between the applicant and respondent No.2 does not show any allegation of sexual abuse of the daughter. This, despite the fact that the aforesaid email exchange had taken place between the applicant and respondent No.2 on 14th November, 2019.

28. Thereafter, on 18th January, 2020, the respondent No.2 caused a notice to be issued to the applicant proposing divorce by mutual consent. In the said notice and the proposed consent terms, she claimed permanent custody of the daughter, but, there was again no whisper of sexual abuse of the

daughter by the applicant. In the email exchange that took place thereafter between the applicant, respondent No.2 and her brother, it was indicated that the applicant should agree to the consent terms, so that the marriage is dissolved. In these emails exchanged between the said parties, the brother of the respondent No.2 even indicated that the applicant would get visitation rights.

29. It was only on 20th October, 2020, in the reply filed in the Habeas Corpus petition that the respondent No.2 for the first time made specific allegations against the applicant about sexual abuse of the daughter. It is crucial that such a stand was taken after repeated orders were passed by this Court directing respondent No.2 to give access to the applicant through video conferencing in order to interact with the daughter. At this stage, in October, 2020, the respondent No.2 approached the police alleging sexual abuse of the daughter.

30. This Court is of the opinion that by the time the respondent No.2 raised the issue of sexual abuse of the daughter, the matrimonial dispute between the applicant and respondent No.2 had taken a turn for the worse and the level of bitterness had considerably increased. This is evident from the fact that, thereafter immediately in November, 2020, the respondent No.2 filed criminal proceedings under the Protection of Women from Domestic

Violence Act, 2005 and in December, 2020, she filed the proceedings before the Family Court for grant of divorce and for custody of the daughter.

31. This Court is of the opinion that the aforementioned delay on the part of respondent No.2 in raising such a serious issue indicates a strong *prima facie* case in favour of the applicant to the extent that such allegations of sexual abuse of the daughter appear to be an afterthought, raised belatedly in the backdrop of the bitter matrimonial dispute between the applicant and respondent No.2.

32. The emails exchanged on 14th November, 2019, upon which the respondents have placed much reliance, show that even if the applicant and respondent No.2 discussed as to the manner in which the applicant was cleaning the body and private parts of his own daughter, while bathing her, even the respondent No.2 in the email exchange had not alleged or indicated any objection on the ground that it amounted to sexual abuse. At this stage, it is found that the said email exchange indicates the difference of opinion between the two as regards the manner in which the hygiene of the daughter was to be ensured. If the respondent No.2 did feel that the same amounted to sexual abuse of the daughter, the natural course of human conduct would expect her to have raised the said issue before the competent authority at the first opportunity. As noted hereinabove, on 29th December, 2019, when the

respondent No.2 dialed 911 and the authorities visited the residence of the applicant and respondent No.2 in New Jersey, USA, only a verbal dispute was reported, and that too was later on improved only to allege grabbing and some form of physical assault by the applicant. Neither in the said report nor in the notice proposing divorce by mutual consent and also not in any of the email exchanges between the parties between November, 2019, till October 2020, did the respondent no.2 raise such a serious issue pertaining to the sexual abuse of the daughter. This indicates a strong *prima facie* case in favour of the applicant.

33. A bare perusal of the statement of the minor daughter recorded by the police on 24th July, 2021, shows that she mentioned the fight between the applicant and respondent No.2 and the fact that she and the mother are living separate from the applicant since 2020. There was no reference to any sexual abuse by the applicant. It was recorded that during the said question answer session, the respondent No.2 was aggressive and pressurizing. It is relevant to note that the said statement was recorded by the police in Haryana in the presence of the Chairperson of the Child Welfare Committee. But, a perusal of the statement recorded about 1 year and 8 months later on 19th March, 2023, before the police in Pune shows material improvements. A graphic description of the alleged incident of sexual abuse is given by the daughter and this is in stark contrast with the earlier statement given by the

minor daughter on 24th July, 2021. This raises doubt and indicates possibility of tutoring of the minor daughter against her father i.e. the applicant.

34. In this backdrop, the delay in raising such a serious allegation of sexual abuse of the minor daughter by the applicant i.e. her own father, coupled with absence of any cogent contemporaneous material to support the same does make out a strong *prima facie* case in favour of the applicant. Merely because offences under the POCSO Act have been registered cannot become the basis for refusing to consider the prayer for anticipatory bail in deserving cases. This Court finds the present case as one such deserving case in the peculiar facts and circumstances. The backdrop of the bitter matrimonial dispute between the applicant and respondent No.2 has to be appreciated while considering the prayer made in the present application.

35. The learned APP has not been able to dispute the assertion made in the application that the applicant indeed appeared before the police stations at Pune in Maharashtra and Faridabad in Haryana when the FIRs were registered. After the two FIRs were clubbed together at Pune, the applicant did send an email with attached documents to the investigating officer, thereby demonstrating his willingness to join the investigation and to cooperate with the same. The issuance of Look Out Circular and non-bailable warrants does show the threat of arrest looming against the applicant. Hence, this Court has

appreciated the contents of the charge-sheet and the documents filed therewith, to examine as to whether a case is made out by the applicant for allowing the present application.

36. In fact, the learned counsel for the applicant made a statement that the applicant himself wishes to clear his name in respect of the serious charges of sexual abuse of his own daughter leveled by the respondent No.2. In that connection, he intends to join the investigation and he undertakes to cooperate with the investigation.

37. The requirement of medical examination of the applicant can be satisfied by issuing appropriate direction for the applicant to come to India and appear before the concerned Court, as also the investigating officer. But, a case for protection from arrest is clearly made out by the applicant.

38. In view of the above, the application is allowed on the following terms:

(A) In the event the applicant is arrested in connection with Special POCSO Case No. 441 of 2023, arising from First Information Report No.0210 of 2021 (FIR) registered at Yerwada Police Station, he shall be released on furnishing PR bond of Rs.50,000/- with one surety of like amount.

(B) The applicant shall appear before the concerned Sessions

Court, wherein Special POCSO Case No. 441 of 2023 is pending, within six weeks from today.

- (C) The applicant shall also appear before the investigating officer within the said period of time for carrying out his medical examination and he shall cooperate with the investigating officer.
- (D) The investigating officer shall complete his questioning of the applicant within two weeks of the applicant appearing before the aforesaid Court and the investigating officer.
- (E) The applicant shall place on record in the aforesaid Court his contact numbers, email address, addresses in India and USA and he shall update the same in case of any change, so that the Trial Court as well as the investigating officer can communicate with the applicant even when he returns back to the USA.
- (F) The applicant shall cooperate with the proceedings in the aforesaid Court during the process of trial and he shall cooperate for expeditious disposal of the trial.
- (G) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

39. Needless to say, in case of violation of any of the aforesaid conditions, the anticipatory bail granted to the applicant shall be cancelled.

40. It is further made clear that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

41. The anticipatory bail application is disposed of.

(MANISH PITALE, J.)