

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1755 OF 2024**

Umesh Radhai Saroj	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Ms. Priyanka S. Thakur for applicant.

Mr. R. M. Pethe, APP for respondent No.1-State.

Ms. Gauri Velankar for respondent No.2 (appointed through legal aid).

Mr. Sanjay Sable, PSI, Uran Police Station, District Navi Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 04th OCTOBER, 2024**

P.C. :

. Heard learned counsel for the applicant, the learned APP for the respondent No.1-State as also the learned counsel appointed to appear on behalf of respondent No.2.

2. In the present case, the applicant is apprehending arrest in connection with FIR No.0243 of 2024 dated 14.05.2024, registered at Uran Police Station, District Navi Mumbai, for offences under Section 34 of the Indian Penal Code, 1860 and Sections 11(i), 11(v), 11(vi) and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The FIR is registered on the basis of a statement given by the Assistant Police Inspector (API), who found certain material which came to light during the course of investigation into an earlier FIR registered against the

applicant at the behest of the mother of the victim in the present case. The earlier FIR was registered against the applicant on the allegation that he had committed rape and he had sexually abused the mother of the minor child-victim herein. The applicant was arrested and he was granted regular bail by order dated 10.05.2024 in connection with the earlier FIR bearing Crime No.165 of 2024. It is the case of the applicant that he has abided by all the conditions imposed by the Sessions Court, while granting regular bail in the context of the earlier FIR.

4. It is the case of the informant i.e. the API in the present case that it came to light during the course of investigation pertaining to the aforesaid earlier FIR that the applicant had caused a video to be recorded at the hands of the minor victim child, when the applicant and the mother of the minor victim child were in a compromising position. According to the said API, the aforesaid act gave rise to offences under Sections 11(i), 11(v), 11(vi) of the POCSO Act, punishable under Section 12 thereof.

5. It is the case of the applicant that even if the statement leading to registration of FIR is taken into consideration, the allegations are against both i.e. the applicant and the mother of the minor victim child, as regards recording of the aforesaid video and it is submitted that the applicant has surrendered his mobile phone to the investigating officer in the context of the investigation undertaken in connection with the earlier FIR. Therefore, his custody is not necessary.

6. This Court had adjourned the hearing, in order to give an opportunity to the learned APP to produce the statement of the minor victim child recorded under Section 164 of the Criminal Procedure Code, 1973. Today, a

copy of the same is produced. In the said statement recorded in question-answer form, while answering question No.8, the minor victim child has specifically stated that the applicant had given mobile phone to him to record the aforesaid video. The said statement does *prima facie* indicate that the video was recorded at the behest of the applicant.

7. But nonetheless, there is substance in the contention raised on behalf of the applicant that since he has already surrendered his mobile phone to the investigating officer in connection with investigation pertaining to the earlier FIR, there is hardly any ground made out for seeking physical custody of the applicant. He was enlarged on regular bail and he has abided by all the conditions imposed, while granting bail to him.

8. A perusal fo the offences under Sections 11(i), 11(v) and 11(vi) of the POCSO Act would show that *prima facie*, offence under Section 11(v) of the said Act could not have been registered against the applicant in the facts and circumstances of the present case. At worst, the applicant could be held liable for offences under Sections 11(i) and 11(vi) of the said Act, for which the punishment is imprisonment for a term extending upto 3 years.

9. Considering the fact that the applicant has already co-operated with the investigation and his mobile phone is in the custody of the investigating officer, a case is made out for granting anticipatory bail.

10. In view of the above, the application is allowed in the following terms:

- (i) In the event the applicant is arrested in connection with FIR No.0243 of 2024 dated 14.05.2024, registered at Uran Police Station, District Navi Mumbai, he shall be released on bail on furnishing PR Bond of ₹ 25,000/- with one or two sureties in the like amount to the

satisfaction of the trial Court.

- (ii) The applicant shall continue to co-operate with the investigation and remain present before the Investigating Officer as and when called.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicants shall co-operate in the proceedings before the trial court.

11. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

12. It is also clarified that the observations made in this order are limited to the disposal of the present application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli