

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1870 OF 2024

Seema Deepak Thakur ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Prabhanjay R. Dave a/w. Mr. Pradeep P. Kumawat for Applicant.

Ms. Megha S. Bajoria, APP for Respondent-State.

Mr. Yash Arora a/w. Mr. Vishal Bhogle for Respondent No.2.

Mr. Kishor Khadke, API, NRI, Sagari Police Station, Navi Mumbai.

CORAM : MANISH PITALE, J.

DATE : AUGUST 14, 2024

P.C. :

1. The applicant is apprehending arrest in connection with FIR No.0136 of 2024 dated 24.04.2024 registered with NRI Sagari Police Station, Navi Mumbai, for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Subsequently, the first informant, who is the husband of the applicant herself, was arraigned as an accused and by the time the charge-sheet was filed, the accused persons are charged with having committed offences under Sections 376(2)(n), 376(3), 370, 465, 468 and 471 of the IPC; Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act); as also under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (PITA Act).

2. Since the offences under the POCSO Act were added in the present case, victim was added as respondent No.2 and notice was issued to her. She is served with the notice and she is represented by counsel.

3. Heard Mr. Dave, learned counsel for the applicant, Ms. Bajoria, learned APP for the respondent-State and Mr. Arora, learned counsel appearing for the victim.

4. In the present case, after registration of the FIR, the manner in which the case unfolded, indicates that the first informant i.e. the maternal uncle of the alleged victim girl herself is arraigned as an accused, while the original FIR was registered against unknown persons. The applicant is a maternal aunt of the victim girl and she is also arraigned as an accused along with other unknown accused persons, who allegedly exploited the victim girl, who was working in an orchestra bar for past couple of years.

5. Initially, in the statement of the informant i.e. the husband of the applicant, which led to registration of the FIR under Section 363 of the IPC, it was recorded that the first informant found the victim girl missing and this led to initiation of the investigation.

6. The investigation revealed that the victim girl had left for Aurangabad to meet her biological mother. It is stated that the victim girl was always under an impression that the applicant and her husband are her parents, while the applicant is actually her maternal aunt. It is allegedly revealed during the investigation that the victim girl was working in an orchestra bar since the age of 12 years and it was indicated that the applicant and her husband, as the maternal aunt and uncle of the victim girl, had forced her to work in the orchestra bar. Further allegations were added of having forged Aadhar Card and other documents of the victim girl to show as if she was a major. On this basis, further investigation was conducted and eventually, charge-sheet was filed, indicating the aforementioned offences under the IPC, POCSO and PITA. The husband of the applicant has been arrested and he is behind bars.

7. The learned counsel for the applicant has tendered a copy of the charge-sheet and he submits that even if the entire contents of the charge-sheet are taken into consideration, there is no material to link the

applicant with the serious allegations made in the present case. It is further brought to the notice of this Court that the victim girl herself in her statement recorded under Section 164 of the Code of Criminal Procedure, 1872 (Cr.P.C.) on 21.05.2024 before the Magistrate, has completely absolved the applicant and her husband, thereby indicating that the present application deserves to be allowed. It is further indicated that the victim girl gave her no objection even before the Sessions Court in favour of the applicant for grant of anticipatory bail and even today before this Court, the victim girl is ready to give such 'no objection'.

8. The learned counsel having instructions to appear on behalf of the victim submits that the victim girl is sticking to her statement made under Section 164 of the Cr.P.C. before the Magistrate, thereby indicating that she has no objection for the present application being allowed.

9. The learned APP, on the other hand, vehemently opposed the present application. She submits that the role of the applicant and her husband is evident from the manner in which the facts have unfolded during investigation. The victim girl, since the age of 12 years, was sent to the orchestra bar and it is unbelievable that the 12 years old girl would have forged her own Aadhar Card and other documents in order to convince the orchestra bar owner to engage her services. It is further unbelievable that the applicant, who is the maternal aunt with whom the victim was residing, was totally ignorant of the said daily activities of the victim girl. It is submitted that these circumstances are sufficient to indicate the involvement of the applicant. No objection being given by the victim girl and her statement recorded under Section 164 of the Cr.P.C. may be appreciated in this backdrop, as very serious offences have been committed and still there are unknown accused persons, who have exploited the victim girl, are on the run and efforts are being made

by the investigating authority to apprehend them.

10. Having heard the learned counsel for the rival parties, this Court finds that the present case is peculiar in its facts and circumstances. The first informant himself is now the main accused person and serious allegations have indeed been levelled against the other accused persons, including the applicant. The material on record does indicate that the victim girl, who herself has stated her age as 14 years 7 months and 6 days on 21.05.2024 when the statement under Section 164 of the Cr.P.C. was recorded, was into the activity of working in an orchestra bar since she was 12 years of age.

11. It is unfortunate that such a minor girl was allegedly exploited physically and sexually at an orchestra bar at a tender age. There is substance in the contention raised by the learned APP that it is simply unbelievable that the applicant and her husband, with whom the victim girl was residing, were ignorant about the said activities at the orchestra bar. Equally, there is substance in the contention of the learned APP that such a minor girl perhaps could not have forged her Aadhar Card and other documents on her own, without the involvement of others. The photographs on record with the charge-sheet indicate the victim girl to be precocious in her growth and her photographs are indeed seen with unknown persons, who are arraigned as accused and investigating authorities are making efforts to apprehend them. But the statement of the victim girl recorded under Section 164 of the Cr.P.C. before the competent magistrate dated 21.05.2024, cannot be brushed aside. In the said sworn statement, the victim girl has completely absolved the applicant and her husband. The aforesaid statement, at this stage itself, indicates that the victim girl may not support the prosecution case at all. It is also a matter of record that before the Sessions Court also, the victim girl had given no objection for anticipatory bail being granted to

the applicant. The same stand is taken before this Court.

12. It is sought to be indicated that the victim girl was a child born outside marriage to her biological mother and in that backdrop, she was sent to the applicant i.e. her maternal aunt. It is sought to be indicated that when the victim girl came to know about the alleged fact, she developed enmity against the applicant and her husband, thereby implicating them in the present case. Such assertions would of course be a matter of trial, but as on today, the stand of the victim girl taken on oath makes a world of difference to the manner in which the present application needs to be considered.

13. Apart from this, the statements recorded during the course of investigation, *prima facie*, do not indicate the role of the applicant in forging documents pertaining to the victim girl and / or forcing her into working with the orchestra bar. Further investigation may lead to material that may come on record, but as on today, in the light of the aforesaid material, the applicant has indeed made out a case for granting relief.

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

- A. In the event the applicant is arrested in connection with FIR No.0136 of 2024 dated 24.04.2024 registered with NRI Sagari Police Station, Navi Mumbai, she shall be released on bail on furnishing PR Bond of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer between 10:00 a.m. and 12 noon on 17.08.2024 and thereafter, as and when called by the investigating officer. She shall co-operate with the investigation;

- C. The applicant shall not influence the victim girl in any manner, who is stated to be in a custody of Child Welfare Committee at Panvel and she shall not tamper with the evidence.

15. In case any of the aforesaid conditions are violated, the present order would be liable to be cancelled. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

16. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab