

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2710 OF 2024

Sanyog Sanjay GaikwadApplicant

VERSUS

The State of Maharashtra And Anr.Respondents

Mr. Vivek N. Arote, with Mr. Akshay Dingale, for Applicant.

Ms. R.N. Newton, APP for Respondent-State.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 07, 2024

P.C. :

1. Heard learned Counsel for the Applicant and the learned APP for the State.
2. Since offences under The Protection of Children from Sexual Offences Act ("POCSO Act") are also registered against the Applicant, notice will have to be issued to Respondent No.2 who is informant/victim in the present case.
3. But, the learned Counsel for the Applicant is pressing for interim relief in the meanwhile. It is submitted that in the present case the informant and the Applicant were in a consensual relationship and when the relationship did not finally workout, the informant turned around to cause the First Information Report to be registered. It is submitted that while the Applicant was aged 19 years and 10 months on the date of registration of the First Information Report that is 6th September 2024, deliberately a reference was made to an incident of 8th October 2022, so that the informant could claim that she was a minor when the first incident of alleged sexual abuse took place, in order to invoke provisions of the POCSO Act. It is submitted that the Applicant is ready to

cooperate with the investigation and this Court may consider granting interim relief.

4. On the other hand learned APP submits that the statement leading to registration of the First Information Report clearly makes out the ingredients of the offences registered against the Applicant, It is submitted that investigation is still under way and therefore, looking to the seriousness of the offences, this Court may not show indulgence to the Applicant.

6. In the present case the Applicant is apprehending arrest in connection with First Information Report No. 0436 of 2024 dated 6th September 2024 registered at police station Loni Kalbhore, District Pune, for offence under Section 4 and 6 of the POCSO Act and Sections 3(1)(w)(i) and 3(1) (w)(ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, Section 64 (2) (m) and Section 88 of the Bharatiya Nyaya Sanhita 2023 (“BNS”).

7. There is no doubt about the fact that serious offences are registered against the Applicant in the present case but, that in itself cannot be a ground to deny interim relief to the Applicant, provided he has made out a prima case for grant of such relief.

8. A perusal of the statement of the informant, leading to the registration of First Information Report, shows that while the first alleged incident of sexual abuse is said to have taken place on 8th October 2022, the First Information Report in the present case is registered almost after two years on 6th September 2024. Even if the said date that is, 8th October 2022 is taken into consideration, it can be said that the informant was on the verge of attaining the age of majority. Hence there is some substance in the contention raised in the Application that it appears that reference to the first incident of 8th October 2022 is made only with a view to invoke the provisions of POCSO Act.

9. The statement of the informant further shows that such incidents

of physical intimacy took place between the informant and the Applicant in November 2023 to August 2024. There is a reference to the fact that they used to meet in a lodge where they got physically intimate. Thereafter, allegation is made about aborting a fetus, as the informant was pregnant.

10. A perusal of the entire statement, prima facie gives an impression that the relationship between the Applicant and the informant could have been consensual. As per the informant herself, she came in touch with the Applicant on social media App Instagram and that the two developed a close relationship. This itself indicates that initiation of relationship between the two prima facie appears to be consensual and therefore, so long as the Applicant is ready to cooperate in investigation, a case for granting interim relief is made out.

11. In view of the above issue notice to Respondent No.2 returnable on 18th November 2024, high on board.

12. Respondent No.2 shall be served through the Investigating Officer for which purpose the Applicant shall provide a copy of the Application to the Investigating Officer within one a week from today.

13. Therefore there shall be interim order in the following terms:-

- A. Till the next date, in the event the Applicant is arrested in connection with First Information Report No. 0436 of 2024 dated 6th September 2024 registered at police station Loni Kalbhore, District Pune, he shall be released on bail on furnishing PR Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] and one or two of the sureties in the like amount;
- B. The Applicant shall remain present before the investigating officer on 9th October 2024 and 10th October 2024 and thereafter, as and when called by the investigating officer.

They shall co-operate with the investigation;

- C. The Applicant shall surrender his mobile phone with the Investigating Officer and make himself available for medical examination if so required by Investigating Officer.
- D. The Applicant shall not influence the informant, witness or any person concerned with the case and they shall not tamper with the evidence.

10. In the event any of the aforesaid conditions are violated, this interim order will be liable to be vacated.

11. List the Application on 18th November 2024, high on board.

(MANISH PITALE, J.)

Arun Sankpal