

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2808 OF 2024

Deepak Kisan Katkade ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Balasaheb Deshmukh (through VC) a/w. Mr. Aditya Vijay Sawant for Applicant.

Mr. Balraj B. Kulkarni, APP for Respondent No.1-State.

Mr. Pradeep Gole for Respondent No.2 - Informant.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 18, 2024

P.C. :

- . Heard Mr. Deshmukh, learned counsel for the applicant.
2. Since offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) are also registered in the present case, the informant / victim will have to be made a party.
3. The applicant is granted leave to amend the application to add the informant as a party respondent No.2. The amendment be carried out forthwith. Mr. Gole, learned counsel, having instructions to represent the informant and the victim, waives notice on behalf of the respondent No.2. The *Vakalatnama* on behalf of respondent No.2 shall be filed within a week from today.
4. In the present case, the applicant is apprehending arrest in connection with FIR No.0396 of 2024 dated 09.09.2024 registered with Manmad Police Station, District - Nashik Rural, for offences under Sections 74, 115 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Sections 8 and 12 of the Protection of Children from Sexual

Offences Act, 2012 (POCSO Act).

5. The offences under the BNS are minor offences and they are bailable. The real reason why the applicant is required to press for anticipatory bail is registration of offences under Sections 8 and 12 of the POCSO Act.

6. The informant, in the present case, is the mother of the victim, who has described the incident as narrated to her by the victim i.e. her daughter. It is alleged that on the date and time of the incident when the applicant came across the victim, initially he told her to come by the side and when she started shouting, he threatened her and pushed her, resulting in a scuffle between the two.

7. The learned counsel for the applicant submits that even if the allegation made against the applicant is to be considered for the sake of arguments, the offence of sexual assault under Section 7 of the POCSO Act, punishable under Section 8 thereof, is not made out against the applicant. He further submits that equally, the offence punishable under Section 12 of the POCSO Act is also not made out. Additionally, it is submitted that there is a background of rivalry between the families and in that connection, he invites attention of this Court to a proceeding initiated by the family of the informant against the family of the applicant under the provisions of the Mamlatdar's Courts Act, 1906. On this basis, it is submitted that since the applicant is ready to co-operate with the investigation, this Court may consider allowing the application.

8. On the other hand, the learned APP as also the learned counsel appearing on behalf of respondent No.2 have opposed the present application. It is submitted that the allegations in the FIR are clear and it is further indicated that on earlier occasion also, similar allegations of threat and assault were levelled against the applicant in the context of

the minor victim girl.

9. This Court has considered the rival submissions. A perusal of the statement of the informant leading to registration of the FIR shows that according to the victim, when she came across the applicant, initially he told her to come by the side and when the victim panicked and started shouting, he threatened her and pushed her, due to which, there was a scuffle between the two. A perusal of the provisions of the POCSO Act shows that 'sexual assault' is defined in Section 7, which is punishable under Section 8 of the POCSO Act with imprisonment, which may extend to a period of five years. A perusal of the definition of offence of 'sexual assault' under Section 7 of the POCSO Act shows that it necessarily requires sexual intent on the part of the accused person and that too, in the context of the specific acts referred to in the said provision. In the present case, none of the acts alleged against the applicant fit into the acts that are referred to in Section 7 of the POCSO Act and *prima facie*, considering the nature of allegations, sexual intent cannot be attributed to the applicant. At worst, it can be said that he pushed the minor girl and threatened her, which could be the basis for registration of the aforesaid offences under the BNS.

10. It is to be noted that even as regards 'sexual harassment' as defined under Section 11 of the POCSO Act, the most crucial ingredient is 'sexual intent'. Having reached the aforesaid conclusion with regard to the nature of acts attributed to the applicant in the present case, it appears that the applicant has indeed made out a *prima facie* case in his favour as regards non-applicability of the offences registered under the POCSO Act.

11. Therefore, the applicant is entitled to relief in the present application. But, considering the history of rivalry between the families and the fact that the applicant and the informant live in the same

neighbourhood, it would be necessary to impose appropriate conditions on the applicant while granting him relief.

12. 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.0396 of 2024 dated 09.09.2024 registered with Manmad Police Station, District - Nashik Rural, he shall be released on bail on furnishing PR Bond of Rs.20,000/- with one or two sureties in the like amount;
- B. The applicant shall remain present before the Investigating Officer on 21.10.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. He shall co-operate with the investigating officer during the course of investigation;
- C. The applicant shall not enter jurisdiction of Manmad Police Station, District - Nashik Rural, till filing of charge-sheet, except for complying with condition (B) hereinabove;
- D. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

13. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. 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.

14. The application is disposed of.

(MANISH PITALE, J.)