

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2845 OF 2024**

Pratik Shantaram Gangurde	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. Arpit N. Mutha for applicant.

Ms. Rutuja Anil Ambekar, APP for respondent No.1-State.

**CORAM : MANISH PITALE, J.
DATE : 23rd OCTOBER, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0081 of 2024 dated 13.04.2024, registered at Gangapur Police Station, District Nashik City, initially for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Subsequently, offences under Sections 366 and 376(2)(n) of the IPC as also Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), have been added.

3. The FIR was registered on the basis of the statement given by the father of the informant, who reported that his daughter i.e. the victim had gone missing and after enquiries were made with the applicant, he denied that the victim had joined his company. On that basis, the FIR was registered against unknown person. At the time of registration of FIR, the victim was 17 years and 8 months old.

4. During the course of investigation and thereafter, it came to light that the victim had joined the company of the applicant and they had travelled to various places before the victim was eventually returned to her family.

5. The learned counsel for the applicant submitted that in the present case, when the statement of the victim was recorded during the course of investigation, she did not implicate the applicant at all. It was only in the statement recorded under Section 164 of Criminal Procedure Code, 1973 (Cr.P.C.) that the victim stated facts that would indicate the involvement of the applicant in the present case. It was submitted that the victim has again changed her stand thereafter and that as on today, she is residing with the applicant.

6. It is further submitted that although the applicant is married, the said fact was within the knowledge of the victim and that in any case, the applicant is not residing with the person with whom he was married and they have their differences. It was submitted that in such a situation, considering the fact that the victim was on the verge of attaining majority and she had joined the company of the applicant on her own volition, this Court may consider allowing the application, as the applicant undertakes to co-operate with the investigation.

7. The learned APP has vehemently opposed the present application. The investigation papers are furnished for perusal of this Court and specific reliance is placed on the statement of the victim recorded under Section 164 of Cr.P.C. It is submitted that the said statement clearly brings out the role of the applicant and a strong *prima facie* case is made out for offences registered against him. It is submitted that the victim being minor at the

relevant point of time, her consent is of no avail. On this basis, it was submitted that the application deserves to be dismissed.

8. This Court has heard the rival submissions, in the light of the material brought to the notice of this Court. Although, initially FIR was registered for offence under Section 363 of IPC, subsequently, the aforementioned offences were added, including serious offences under Sections 4 and 8 of the POCSO Act.

9. This Court has perused the statement of the victim recorded under Section 164 of the Cr.P.C. on oath before the concerned Magistrate. In the said statement recorded on 18.09.2024, the victim had stated in detail as to the manner in which she went against the desire of her family members and joined the company of the applicant. She has then stated as to the places where she was taken by the applicant and the manner in which the applicant and his lawyers were advising her not to tell the truth and facts to the police. In her statement, it is also specifically stated that after she had joined the company of the applicant and they had travelled at various places, she became aware of the fact that the applicant is already married. This militates the claim of the applicant that the victim knew all along that the applicant was a married man.

10. Even otherwise, at the point in time when the offence was committed, the victim was minor and therefore, her consent would be of no consequence. Even if she was on the verge of attaining majority, this is not a case where the victim, at the verge of attaining majority, was in a consensual relationship with a person, who himself was just above the age of majority and therefore, this Court could take different view in the matter.

11. In the present case, the applicant being a married man, entered into a relationship with the victim, who was minor at the relevant time. He took her to different places after she joined his company. In the aforesaid statement of the victim, there is also reference to physical relationship between the two.

12. The applicant cannot claim any relief on the basis that he and his wife have their differences and they have been living apart. There is nothing to show that the applicant has taken divorce from his wife. In this backdrop, when the victim has gone against the desire of her family and remained in company of the applicant for considerable period of time before being brought back, merely because the applicant claims that the victim is residing with him, cannot be a ground for granting discretionary relief.

13. The application is dismissed.

(MANISH PITALE, J)

Priya Kambli