

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3169 OF 2024

Salman Shakil Choudhari ... Applicant

Vs.

State of Maharashtra and another ... Respondents

Mr. Tusshar C. Nirbhavne a/w. Mr. Vikas Kharat and Mr. Ulkesh Gangurde for Applicant.

Mr. Tanveer G. Khan, APP (through VC) for Respondent No.1.

Mr. Mohsin Khan for Respondent No.2.

Mr. Haribhau Bhosle, PSI, Nalasopara Police Station.

CORAM : MANISH PITALE, J.

DATE : NOVEMBER 28, 2024

P.C. :

1. Heard Mr. Tusshar Nirbhavne, learned counsel for the applicant, Mr. Tanveer Khan, learned APP for the respondent-State, as also Mr. Mohsin Khan, learned counsel, having instructions to appear on behalf of the first informant.

2. Since offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) are also registered, it is necessary to hear the first informant. As learned counsel having instructions to appear on behalf of the first informant / victim is present in Court and he has been heard, the application is taken up for final disposal.

3. The learned counsel for the applicant submits that although the allegations made in the present case can be said to be serious, there is delay of 8 days in registration of the FIR and it has been registered in the backdrop of an altercation between the applicant and the informant. It is brought to the notice of this Court that the first informant married for the

second time with the applicant as her first marriage had ended up in divorce. Even the marriage between the applicant and the informant did not succeed and the two have separated although intermittently, the applicant used to be in touch with the informant. It is submitted that on one such day i.e. on 17.08.2024, the applicant was with the informant. There was an altercation as according to the applicant, the informant was making unreasonable demands from the applicant. It is submitted that the applicant is ready to co-operate with the investigation, and therefore, this Court may consider allowing this application.

4. On the other hand, the learned APP, as also the learned counsel having instructions to appear on behalf of the applicant have vehemently opposed the application. In the first place, they have pointed out that there are criminal antecedents against the applicant, indicating that giving relief to such an applicant may be fraught with risk. It is further submitted that the allegations made by the victim are extremely serious and she has reiterated the said allegations in her sworn statement recorded before the Magistrate on 03.09.2024 under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

5. It is submitted that since the present case involves acts of sexual harassment against a minor girl, aged only about 14 years, this Court may dismiss the application.

6. This Court has considered the rival submissions in the light of the material brought on record. There can be no doubt that the allegations appear to be serious, particularly because they pertain to offences under the POCSO Act and that too, in the context of the victim girl, who is aged only about 14 years.

7. But, the backdrop in which the FIR has been registered cannot be completely ignored. The statement of the informant, who is the mother

of the victim, which led to registration of the FIR, itself, shows that even according to her, on 17.08.2024, the applicant had visited the informant, there was a serious altercation or quarrel between the applicant and the informant, during which, the applicant allegedly abused the informant in the presence of her daughter i.e. the victim.

8. The alleged incident of sexual harassment suffered by the victim is stated to be dated 18.08.2024 at about 10:00 a.m. in the morning. Yet, the FIR has been registered about 8 days later i.e. on 26.08.2024 in the evening. *Prima facie*, this Court finds that the delay in registration of the FIR in the present case can be said to crucial in the backdrop of disputes between the applicant and the informant and the incident of 17.08.2024 to which the informant herself has made reference. Considering the serious allegations made against the applicant, swift registration of the FIR was expected. But, it appears that according to the informant, the victim told her about the incident only on 23.08.2024. There is a possibility of the FIR being registered due to the discord between the applicant and the informant.

9. This Court is of the opinion that the statement of the informant recorded under Section 183 of the BNSS shows further improvements made by the victim by referring to incidents that allegedly occurred couple of months back also. This gives a *prima facie* impression to this Court that efforts have been made to ensure that the series of the allegations made against the applicant leave no room for granting any relief in the present application. The criminal antecedents of the applicant show that as regards the earlier FIR registered in the year 2021, the applicant has been granted anticipatory bail. That in itself cannot be a ground to deprive the applicant a relief in the present case. The apprehensions expressed on behalf of the victim and the informant that granting relief to the applicant would be fraught with risk can be

addressed by imposing appropriate conditions on the application.

10. It is also to be noted that the maximum punishment provided for offence under Section 74 of the BNS is five years. Similarly, for offences under Sections 8 and 12 of the POCSO Act, the maximum punishment prescribed is of 5 years and 3 years respectively. These are also factors being taken into consideration by this Court, while disposing of the application.

11. 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.0314 of 2024 dated 26.08.2024 registered with Nalasopara Police Station, District - Mira Bhayander, Vasai Virar, he shall be released on bail on furnishing PR Bond of Rs.25,000/- with one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer on 30.11.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. He shall co-operate with the investigation;
- C. The applicant shall not enter jurisdiction of Nalasopara Police Station, till filing of the charge-sheet, except for abiding by condition 'B', hereinabove;
- D. The applicant shall not, in any manner, reach out or contact either the victim or the informant till filing of the charge-sheet;
- E. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

12. 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.

13. The application is disposed of.

(MANISH PITALE, J.)

Minal Parab