



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO. 991 OF 2025**

Sunny S/o Satish Patole
Versus
The State of Maharashtra & Anr.

Mr. Sudarshan Salunke h/f Mr. Prasad Kadam for the Applicant.
Mr. A. V. Lavte, APP for the State.
Mr. V. H. Pathade for Respondent No.2.

CORAM : ADVAIT M. SETHNA, J.
DATE : 13 AUGUST 2025

ORAL JUDGMENT:

Prologue:-

1. Heard Mr. Salunke, learned Advocate for the Applicant and Mr. Lavte, learned APP for the State at length. With their assistance, I have perused the FIR and the record available with the Court. Mr. Lavte has also furnished copies of investigation papers/case diary before the Court. The peculiar and rather unique factual backdrop in the given case has given rise to some intriguing issues that form a subject matter of consideration of the Court.

2. The proceedings relate to FIR No.0442 of 2016 lodged on 12 August 2016 by the S. B. Jalna Police Station, Jalna. The occurrence of the incident is shown on 1 July 2016 to 10 August 2016. The offences alleged are under Sections 376(a), 506 r/w Section 34 of the Indian Penal Code, 1960 (“**IPC**”), Sections 3, 4, 11(1)(5), 15 and 12 of the Protection of Child from Sexual Offences Act, 2012 (“**POCSO**”) and Section 66(e) of the Information Technology Act, 2000 (“**IT Act**”). There are six accused persons as named in the FIR, out of whom, Accused No.2. i.e. Sunny S/o Satish Patole is before this Court. It is to be noted that pursuant to the filing of the

FIR, the investigation substantially progressed and culminated into a charge-sheet dated 8 November 2016.

Case in FIR:-

3. As far as the allegations against the Applicant and the case of the prosecution in brief is concerned is this:- At the time of the incident, the victim was a minor girl of about 16 years of age. The Accused No.1-Prashant Lokhande used to talk with the victim prior to one month of lodging the complaint/report. The said Prashant met the victim and asked her to accompany him. When the victim refused to do so, he threatened to kill her. Thereafter she forcibly went with him. He then took the victim to the house of his paternal aunt as his paternal aunt was not present at that time.

4. The Accused No.1-Prashant tried to sexually assault the victim. It was at that juncture that the present Applicant i.e. Sunny S/o Satish Patole came inside the said house. The Accused No.1-Prashant took the mobile from the present Applicant-Sunny and told the victim that the present Applicant had taken video clips recording some obscene videos of the victim. The Accused-Prashant then threatened the victim to act as he would direct otherwise the video would be made viral. Then again on the pretext making such video viral, the Accused-Prashant sexually assaulted the victim. The other co-accused person as named in the FIR apparently abated the said Accused-Prashant in the said acts. The present Applicant brought the victim to the house of the paternal aunt of the said Accused-Prashant, where he committed the alleged sexual intercourse with the victim which continued by taking the victim to the house of the paternal aunt of the Accused Prashant. It was in such circumstances that the victim, which was minor then about 16 years of age, lodged report and FIR came to be registered.

Submissions on behalf of the Applicant:-

5. In such background, Mr. Salunke in his opening would refer to

the allegations in the FIR as well as the alleged provisions/Sections invoked in the proceedings. He would submit that the present accused apprehending arrest in such situation applied for anticipatory bail before the learned Sessions Court (Trial Court). On 20 September 2016, the Sessions Court after hearing the parties, passed an order rejecting the Anticipatory Bail Application of the present Applicant.

6. Mr. Salunke would then state that thereafter on 8 November 2016 a specific charge-sheet under Section 299 of the erstwhile Cr.P.C. was filed against the Applicant primarily on the ground that the Applicant is absconding. In such background he would continue to submit that the Accused persons, namely, Accused Nos.1, 3 and 6 were tried before the Special Court at Jalna. The trial culminated in a judgment and order dated 3 January 2018, whereby Accused No.1-Prashant Lokhande, Accused No.3-Sheetal Ghorpade and Accused No.6-Meena Khane were acquitted for offences as noted above. Mr. Salunke in this context would contend that such judgment and order resulted in acquittal of the said accused persons primarily because of the prosecutrix not supporting the case of the prosecution. Responding to a query of the Court as to the status of the present Applicant during the trial, Mr. Salunke would strenuously contend that though he was not present during the trial, the Trial Court never summoned him. There were no steps taken during the entire trial to secure his presence by the Trial Court which could easily have been done in accordance with law. There is no impediment according to Mr. Salunke in the Trial Court following such procedure.

7. He would thus submit that neither was the present Applicant absconding nor did he conceal himself. In this context he places strong reliance on several documents of different dates right from 22 August 2016 sole and so forth upto 24 July 2024, which are a part of his Anticipatory Bail Application to indicate that the accused was very much within the precincts

and jurisdiction of the said Court and he was perusing his education and moving towards his professional goals. These documents would show that this Applicant was from the year 2018 applying for police recruitment and had duly participated in such recruitment from 2018 at least upto July 2024. Mr. Salunke would emphasize on the fact that for verification of documents in such process, he was physically called to the office of the Commandant, State Reserve Police Force, Jalna (“SRPF”) on 3 March 2025. He did not avoid going there. He physically went there and once again joined the said process.

8. All of the above according to Mr. Salunkhe would mean that the authorities were aware of his presence throughout and it cannot be said that he was concealing himself in any manner whatsoever. Mr. Salunke would then place reliance on an affidavit filed by the prosecutrix (page 55 of the Application) before the Sessions Court during the trial, where the prosecutrix *inter alia* stated that on the relevant time she was a minor, she does not know the present Applicant-Sunny. She confessed to have married the Accused No.1-Prashant, who is stated to be the main accused. Such affidavit was very much before the Trial Court which would have taken due note and cognizance of. Mr. Salunke in this context would also refer to an affidavit filed by the prosecutrix dated 26 June 2025 in the present Application, where the prosecutrix reiterates that she is happily married with the co-accused-Prashant and has children and in-laws and she has no grievance in respect of the present crime.

9. Mr. Salunke would then urge that merely because a charge-sheet is filed under Section 299, it can never mean that the accused is absconding on such ground alone. In this context, he would place gainful reliance on the judgment of a Division Bench of this Court in the case of ***Sajjan Hirchand Gusinge Vs. State of Maharashtra***¹, more particularly to

¹ AIR Online 2023 Bom 220

paragraph 12 thereof. He would thus submit that the Court in that case observed that Section 299 of the Cr.P.C. is an enabling Section, which enables the Court to record the evidence against an absconding accused. It does not empower the investigating agency to file charge-sheet under that Section. It will have to be shown by the investigating officer that there were efforts to arrest the concerned accused. Also, considering an accused as absconding, the procedure as contemplated under Section 82 of the Cr.P.C. ought to have to been resorted to in accordance with law.

10. Mr. Salunke would thus submit that none of these requisitions as mandated above have been complied with and/or exist in the given factual matrix. Mr. Salunke would then urge that even if the accused was absconding or concealing himself, nothing prevented the prosecution from invoking the provisions of Section 82 and 93 of the Cr.P.C. and follow the procedure in that regard. Admittedly and undisputedly submits Mr. Salunke that this was not done. In such circumstances, he would submit that the Anticipatory Bail Application of the Applicant deserves to be allowed.

Contentions of the prosecution:-

11. On the other hand, Mr. Lavte has vehemently objected to the grant of any relief in the given facts and circumstances. He would then contend that whatever Mr. Salunkhe has submitted is not factually correct in the given scenario and is also not supported by the settled principles of law. Accordingly, Mr. Lavte would open his case by submitting that the role of the present Applicant is completely different from that of the co-accused, who faced the trial and subsequently acquitted. According to him, it is this Applicant who recorded the video of the obscene, alleged sexual act committed by Accused No.1 on the basis of which she was blackmailed and that resulted in her forcibly surrendering to the pressure and overtures of Accused No.1-Prashant. In this context Mr. Lavte would urge that the provision of Section 66(e) of the IT Act in the charge-sheet have been

correctly invoked as far as the present Applicant is concerned. He would then draw the attention of the Court to the order of the Sessions Court (Trial Court), more particularly to paragraph 43 therein to specifically submit that the Court has recorded that there is no material against the Accused-Prashant to prove the offence punishable under Section 11(v) of POCSO and under Section 66(e) of the IT Act. Mr. Lavte would urge that the Applicant deliberately consciously and knowingly concealed himself throughout the trial. It was in such circumstances, according to him, that the Trial Court was left with no alternative but to acquit the other co-accused persons. According to him even though the version of the prosecutrix did not support the case of the prosecution, one cannot turn a blind eye to her statements recorded under Section 164 of the Cr.P.C. which make out a clear case against the present Applicant.

12. Mr. Lavte would then contend that every possible attempt was made by the police authorities to arrest the present Applicant, however, they were not successful. In this context, he would place due reliance from the case diary on one of the communication dated 1 September 2016 from the investigating officer to the in charge of the said police station to note that despite best efforts and all attempts made, the present Applicant continues to remain absconding and is not to be found. Mr. Lavte would then contend that on 20 September 2016 when his Anticipatory Bail Application was first rejected by the Sessions Court, he was fully aware and had knowledge of the registration of crime. Thus, he cannot turn back and say that he was not aware of such proceedings. According to him, this Application of the Applicant is a sheer abuse to the legal process where he has approached this Court on his own whims and fancies and as per his convenience after being selected by the SRPF only because he does not want the present crime to be a hurdle and/or an obstacle in his way of future progress.

13. Mr. Lavte has then placed reliance on a judgment of the

Supreme Court in the case of ***Serious Fraud Investigation Office Vs. Aditya Sarda***². Mr. Lavte would place specific reliance on paragraph 27 of the said judgment to contend that the Supreme Court has clearly held that the Respondent-Accused, who have continuously avoided to follow the due process of law, by avoiding attendance in the Court, by concealing themselves and thereby attempting to derail the proceedings would not be entitled to the anticipatory bail which deserves to be rejected. He also places reliance on the earlier part of the said paragraph 27 of the Supreme Court judgment (*Supra*) that by his conduct, the Applicant has wasted the precious time of the Trial Court when such practice has been deprecated by the Supreme Court in the said paragraph.

14. Mr. Lavte would then rely on the decision of the Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.***³ to contend that it is not the requirement of custodial interrogation alone but equally that of *prima facie* case which needs to be considered while adjudicating for anticipatory bail. According to Mr. Lavte, the prosecution has made out a *prima facie* case against the Applicant which itself entitles rejection of his Application.

15. Mr. Salunke in rejoinder would respectfully submit that the decision of the Supreme Court cited by Mr. Lavte in ***Serious Fraud Investigation Office*** (*supra*) would not apply to the given factual matrix in any manner. In this regard, he would draw the Court's attention to paragraph 29, where the Court has made a specific reference to the procedure under Section 82 which was followed in the facts and circumstances of that case unlike the present case where such procedure was not even initiated by the prosecution. Mr. Salunke in rejoinder would also submit that in the given facts as noted above, it cannot be said that Applicant was either absconding and/or concealing himself in any manner

2 AIR Online 2025 SC 241

3. (2022) SCC OnLine SC 1529

as he was always available, to the knowledge of the police authorities.

Analysis:-

16. I have given my anxious consideration to the facts of the present case as well as to the material available before the Court, the case diary/investigation papers and the submissions advanced by the learned Advocates for the parties. At the very outset as far as the task of this Court is concerned, it is limited to deciding the Application for anticipatory bail without going much into the nuances of the trial at this stage of the proceedings. At this preliminary stage of the proceedings, the settled principles laid down by the Supreme Court in cases of anticipatory/pre-arrest bail, more particularly in the decision of the Supreme Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors.***⁴ and in this context the factors/parameters to be taken into consideration while dealing with anticipatory bail. Equally the importance of *prima facie* case which is a *sine qua non* in consideration of an Application for anticipatory bail is duly taken note of as held by the Supreme Court in the case of ***Sumitha Pradeep*** (supra).

17. Firstly, the submission of Mr. Lavte is in regard to the role of this Applicant being different than that of the co-accused persons, who faced the trial and were eventually acquitted, is noted. However, it may be necessary also to observe that the prosecutrix, factually, has not supported the case of the prosecution in totality which at this stage cannot be construed in piecemeal. She has consistently taken a stand by way of a say on oath filed before the Sessions Court (Trial Court) and also before this Court that she is happily married with the principal/key Accused-Prashant, has children and in laws, a family to look forward to and has no grievance in regard to the complaint. This is the undisputed factual position.

18. It then appears from the record that the Trial Court has taken

4 (2011) 1 SCC 694

due cognizance of the affidavit filed by the prosecutrix which was placed on record of the Trial Court (page 55 of the Application). This is further fortified by the affidavit that she has filed in these proceedings as noted above. From the record it also appears that the Trial Court did not summon the present Applicant during the course of the trial until its culmination. It is rather surprising that no steps and/or proceedings were initiated by the prosecution agency and /or by the Trial Court to ensure the presence of the Applicant. The least that could have done is issuance of bailable/non-bailable warrants to secure the presence of this Applicant which was not done / undertaken.

19. The Court cannot give a complete go by and overlook the submissions of Mr. Salunke which hinge on the overarching factual aspects of the case that the Applicant was always available which is *prima facie* evident from the various documents which are placed on record from April 2016-17 onwards including document dated 24 July 2024 and followed by the Applicant's visit to the office of SRPF on 3 March 2025 for verification of documents. Pertinent it is to note that the prosecution has not disputed, much less denied any of these documents. *Prima facie* Mr. Lavte's contention that the Applicant deliberately concealed himself for the last 9 years is not supported by the facts on record and the documents as noted above which demonstrate otherwise. The submission of the prosecution that charge-sheet was issued under Section 299 of the Cr.PC. as the Applicant was absconding is duly noted. However, a bare perusal of the said Section would demonstrate that it deals with recording of evidence in the absences of Accused. For clear reference, the said Section reads thus:-

“299. Record of evidence in absence of accused.- (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial, such person for the offence complained of, may, in his absence, examine

the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witness who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limit of India”

20. In the above context, I have carefully examined the decision of this Court in ***Sajjan Hirchand Gusinge*** (supra), cited by Mr. Salunkhe. The Court had the occasion to interpret Section 299 of the Cr.P.C. held that it is an enabling provision which enables the Court to record the evidence against an absconding accused. It is not a provision which empowers the investigating agency to file charge-sheet under that Section. More important, relevant and applicable to the given facts is the observation of the Division Bench of this Court in the said judgment to say that it will have to be shown by the investigating officer that there were efforts to arrest the concerned accused. In the factual matrix in the given case, the prosecution has only been able to place on record one isolated letter dated 1 September 2016, addressed by the investigating officer to the in charge of the concerned police station which merely records that the accused is not traceable. However, as noted above he seemed to be available pursuing his police recruitment with SRPF and actively participated in such process throughout.

21. In my view there is, to say the least, some complacency on behalf of the investigating agency, the police authorities, who are otherwise required extremely prompt, vigilant and active when an Anticipatory Bail Application is rejected to arrest the Accused so as to bring them to law, which is integral to their constitutional and statutory duty. Considering the fact that the Accused was never produced before the Trial Court in the given factual matrix, when he was otherwise available in Jalna District, would indicate that there has been a visible and apparent lapse on the part of the concerned investigating agency. This also in terms of assisting the trial court in securing the presence of the Applicant during the trial which was not even separated at that stage, knowing fully well that his presence was crucial for the prosecution.

22. Adverting to the decision of the Supreme Court, on which Mr. Lavte laid much reliance is also carefully examined. A bare perusal of paragraph 27 of the said judgment would indicate that the Supreme Court has referred to an earlier decision in the case of ***Srikant Upadhyay & Ors. Vs. State of Bihar & Anr.***⁵. It may be apposite at this juncture itself to note that the Supreme Court in the said case did not mince words to hold that at any rate when warrant of arrest or proclamation is issued, the Applicant is not entitled to invoke the extraordinary power of anticipatory bail. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice, even in such situation. The said decision has found gainful reference and re-iteration in a recent decision of the Supreme Court in ***Deepak Aggarwal Vs. Balwan Singh & Anr.***⁶ Juxtaposing this to the case before the Court, evidently no steps in regard were taken by the investigating agency under Section 82 and/or Trial Court under Section 83 of the Cr.P.C. despite there being no statutory embargo in this regard.

⁵ (2024) SCC OnLine SC 282

⁶ Order dated 18 December 2024 passed in Criminal Appeal No.5456 of 2024

23. In fact, the observations of the Supreme Court in paragraph 29 of the judgment in **Aditya Sarda** (*Supra*) are vital. The Supreme Court categorically holds that in that case the Special Court had passed detailed order for issuance of non-bailable warrant and thereafter had also initiated proclamation under Section 82. In light of such well settled legal position, the Supreme Court held that the Applicant could not have been granted the benefit of the extraordinary indulgence of the anticipatory bail. However, in the given factual matrix the prosecution does not dispute that the procedure under Section 82 of the Cr.P.C. which also embraces a situation of conducting trial in the absence of the Accused was not initiated, much less followed. Despite the stand of the prosecution that the Applicant concealed himself and is absconding all the more necessitated that the statutory procedure for proclamation for absconding person under Section 82 of Cr.P.C. be followed. This is in my view clearly distinguishes the ratio in the case of **Aditya Sarda** (*Supra*) from being applicable to this case.

24. I have duly noted the submissions of Mr. Lavte, who would place due reliance again on paragraph 27 to note the observation of the Supreme Court that the Applicant by concealing himself and attempting to derail the proceedings could not be entitled to anticipatory bail. However, this in my view cannot be in isolation but to be considered in totality and in harmony, in sync with the observations in paragraph 29 of the said decision which makes the legal position crystal clear, which in the given facts does not even *prima facie* support the case of the prosecution.

25. Mr. Lavte is right in submitting that the time of the Trial Court or any Court for that matter is equally precious as observed by the Supreme Court in paragraph 27 in the case of **Aditya Sarda** (*supra*). However, having said that in such factual matrix it was more if not less at the least equally the responsibility of the prosecution to take appropriate steps and make all efforts as mandated in law to arrest the accused particularly after rejection

of his anticipatory bail in the year 2016. If not then they could have very well adopted the statutory course under Section 82 of CRPC which specifically takes cares of such eventuality. There is no explanation except stoic silence and in fact no denial by the prosecution that this procedure was not followed. It is also the inaction of the prosecution agency which has led to such impasse in the given factual matrix. It is pertinent to note that besides not taking the efforts to arrest the said Applicant even after rejection of his ABA initially in 2016, the prosecution has failed to even initiate the procedure mandated under Section 82 of CRPC during trial where accused is said to be absconding. Further, the judgment and order of the Sessions Court dated 3 January 2018 resulting in the acquittal of the co-accused persons including the main/key Accused-Prashant is also apparently not assailed and thus continues to hold the field until date. Thus, in the absence of such steps being taken by the prosecution, *inter alia*, under Section 82 of CRPC, the Applicant cannot even be a proclaimed offender which in the given facts has slipped into oblivion.

26. In the peculiar facts of the present case, the Court cannot also overlook the consistent stand taken by the prosecutrix as noted above. The prosecutrix has moved ahead in life and has a happy family as stated by her on oath clearly inferring that she does not want to carry the proceedings any further. Years have passed since 2016 when the Applicant's Anticipatory Bail Application was rejected for the first time he was never arrested, after which he has very been a part of the society and moved as a free man. Considering such facts, I am unable to fathom as to what purpose would be served by the physical custody of the Applicant at this stage, when his alleged role was of taking pictures or videos of the prosecutrix on the mobile phone, at the instance of the co-accused Prashant with whom she has willingly married and now has a family. A perusal of the Section 164 statement of the prosecutrix also indicates that the Accused No.1-Prashant Lokhande

committed the acts tantamounting to offences, *inter alia* under POCSO Act, who is acquitted. Also, for all practical purposes, such phone may not even be available at this belated stage which the prosecution also fairly does not dispute. The Court in a pre-arrest bail application is concerned with the detention of the Applicant/Accused at the investigation stage and not testing the legality of the case instituted against him as observed by the Supreme Court in ***Bijender Vs. State of Haryana***⁷. Now coming to Mr. Lavte's submission on reliance on the judgment of the Supreme Court in ***Sumitha Pradeep*** (supra) a careful perusal of the said judgment would indicate that it was rendered in completely different set of facts and circumstances, as noted in paragraph 7 of the said decision. It is trite law that a judgment cannot be considered in isolation, in vacuum and it is always to be applied to the given facts. On this ground also, the contention of Mr. Lavte in this regard does not support the case of the prosecution.

27. Before parting it cannot be overlooked that the principal Accused already stands acquitted in the circumstances as noted hereinabove. The Applicant in relation to the said trial was certainly a co-accused in the context of the principal crime, as the alleged actions of the Applicant were integral to the principal crime a trial in relation to which itself resulted into an acquittal. In these circumstances, when the Applicant having been not arrested at the relevant time and committed to trial, are certainly serious lapses on the part of the prosecution. In such fact, situation to accept the case of the prosecution that the Applicant is required to be arrested so as to forward the investigation and/or ultimately for the Applicant to be tried for the offences as alleged, on the backdrop of the main accused being already acquitted, in my opinion, certainly does not make out any case for rejection of this Application for grant of an anticipatory bail. It needs to be reiterated that the offences under the POCSO Act are grave offences and are required

⁷ Order dated 6 March 2024 passed in SLP (Cri.) (S) No.1079 of 2024

to be investigated and brought to justice with utmost gravitas. Further, this is equally required in the investigation and all other necessary steps which would be taken by the prosecution so that when there is strong investigative material pointing towards the guilt of the Accused, the conviction succeeds. This is certainly not a case where an appreciation can at all be extended to the investigating agencies, in the manner they have so acted in the Applicant's case. So also, the Applicant is expected to follow the rule of law and its due process going forward, which is not just the hallmark of a civilized society, but also a non-negotiable Constitutional obligation.

28. I find it just and proper to allow the Anticipatory Bail Application of the Applicant in the following terms:-

ORDER

- (i) In the event of arrest of the Applicant in connection with CR No.442 of 2016 registered with S. B. Jalna Police Station, Jalna for the offences punishable under Sections 376(a), 506 r/w Section 34 of the IPC, Sections 3, 4, 11(1)(5), 15 and 12 of the POCSO and Section 66(e) of the IT Act, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.20,000 (Rupees Twenty Thousand Only) with one or more sureties in the like amount.
- (ii) The Applicant shall cooperate with the investigation and shall attend the concerned police station as and when called by the Investigating Officer, until filing of the charge-sheet.
- (iii) The Applicant shall furnish details of residential address and other contact details such as mobile number etc. to the concerned police station. If there is any change in the contact details, the same shall be immediately intimated to the concerned police station.
- (iv) The Applicant shall not leave the jurisdiction of the Court

without prior permission/order of the Court, until and subject to further orders of the Court.

- (v) The Applicant shall not influence the witness/es and/or tamper evidence in any manner whatsoever.

29. Needless to mention that the observations made above are *prima facie* for the purposes of adjudicating this Application.

30. The Anticipatory Bail Application is **Allowed** in the above terms.

[ADVAIT M. SETHNA, J.]