



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 1142 OF 2024

Bashid Baig Barati Baig Mogal

VERSUS

The State Of Maharashtra And Another

WITH ANTICIPATORY BAIL APPLICATION NO. 1192 OF 2024

Imran Baig Rahemath Baig Mirza

VERSUS

The State Of Maharashtra And Others

WITH ANTICIPATORY BAIL APPLICATION NO. 1885 OF 2024

Putlibi W/o Maulasab Shaikh

VERSUS

The State Of Maharashtra

CORAM : R. M. JOSHI, J.

DATE : 17th February, 2025

PER COURT :-

1. Suo moto this motion is moved for speaking to minutes of order dated 31.01.2025 to replace the "ABA No.1185/2024" appearing in operative part with "ABA No. 1885/2024". So also, wherever "he" appearing in operative part be replaced with "she".

2. Necessary corrections be carried out and corrected order be uploaded.

(R. M. JOSHI, J.)

bsj

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Mr. G. R. Syed, Advocate for applicant in ABA No. 1142/2024 and 1885/2024

Mr. P. P. Giri, Advocate for applicant in ABA No. 1192/2024

Mrs. Vidya Urgunde, Advocate for respondent No.2 in ABA 1142/2024 (Appointed)

Mr. R. P. Cheble, Advocate for respondent No. 3 (Appointed)

Mrs. M. N. Ghanekar, APP for respondent/State

CORAM : R. M. JOSHI, J.

DATE : 31st January, 2025

PER COURT :-

1. This Court passed orders dated 14.01.2025, 15.01.2025 and 16.01.2025, calling upon Investigation Officer to remain present and show cause as to why action should not be directed against him for non complying the provisions of Protection of Children from Sexual Offences Act (for short "POCSO Act") and for not filing charge sheet against the

persons against whom prima facie involvement in the crime is seen. Investigating Officer has filed affidavit giving explanation to the said orders.

2. Learned APP has drawn attention of the Court to the investigation papers. It is submitted that from the investigation papers and the statements recorded therein, it can be seen that the actual incident had occurred much prior to lodging of the First Information Report, and CCTV cameras installed therein were already removed. It is her further contention that the Investigating Officer has recorded statements of minor girls in the presence of members of Children Welfare Committee (CWC) and as such, this cannot be said to be a case of non compliance of POCSO Act. It is further submitted that the statement of co-accused indicates that CCTV cameras were not installed at the instance of the informant and thus, according to her, no action is contemplated against Investigating Officer. She further submits by drawing attention of the Court to the relevant provision of POCSO Act that the provisions of Section 21 would not get attracted against informant as he is one who has lodged report though belatedly in respect of the alleged offence against minor girls.

3. The orders passed by this Court earlier were on prima facie consideration of the record. However, the explanation provided by

learned APP, makes this Court reason to believe that there is no apparent non compliance of the provisions of POCSO Act as well as other provisions while conducting the investigation. The explanation that on the basis of the statement of the co-accused the informant was not found to be instrumental for the installation of CCTV cameras is a probable one. Similarly, reliance placed by the Investigating Officer on evidence collected in investigation could be considered ought not to take action against informant. Thus, in view of such situation, it would be unnecessary to initiate/propose any action against Investigation Officer. As a result of this, no further action is initiated against him. Show cause notice issued against him stands recalled.

4. Reverting back to the merits of the applications, applicants apprehend arrest in connection with Crime No 0320/2023 registered with Umri Police Station, Tq. Umri, Dist. Nanded the offence punishable Under Sections. 376(2)(d)(f)(i)(n), 376(3). 354(c) of the Indian Penal Code, under Sections 4, 6 of the Protection of children from Sexual Offences Act (POCSO Act), 2012 & under Section, 66E, 67 of the Information Technology Act, 2000.

5. The gist of the First Information Report is that the informant and others suspected sexual harassment of the minor girls studying in Madarsa at the hands of Maulana. On installation of CCTV cameras in

Madarsa though nothing is captured, it indicates offence against minor girls but it captures an incident in which Maulana was found to have been sexually involved in a lady. The first informant also claimed that there was another lady who claimed herself to have been ravished by Maulana while she was studying in Madarsa and at that time, she was minor.

6. Now, admittedly, charge sheet is filed and investigation is over. Learned counsel for the applicants submits that there is no substance in the allegation made by the informant against the accused persons. It is their submission that from the investigation carried out till date, it cannot be said that any offence is made out against any of the accused under the provisions of POCSO Act. It is further argued that other offences alleged against the applicants under Indian Penal Code or under the Information Technology Act are bailable offences. It is further submitted that though there is allegation against one of the accused that he had committed rape on one lady, the statement recorded of the said victim indicates that it was a consensual relation between two adults. Thus, their contention is that applications deserve to be allowed.

7. Learned APP and learned counsel for the victim opposed grant of anticipatory bail by citing seriousness of the crime.

8. Though, from the perusal of the First Information Report, an

impression is created as if this is a case of minor girls studying and residing in Madarsa being ravished by one of the accused person and other accused person participated in the crime on one or the other count. There is no dispute about the fact that the statements of all minor girls were recorded in presence of members of Children Welfare Committee (CWC) and these girls make no incriminating statement against any accused. Further, there is statement of the victim who was subjected to the consensual relationship to say that she had consensual relationship with one of the accused. In so far as other accused are concerned, allegations against them at the most could be offence under the provisions of the Information Technology Act and under Section 354 of Indian Penal Code, which are bailable offences.

9. As a result of this, there is no reason to reject applications. Hence, the order :-

ORDER

(i) ABA Nos.1142/2024 and 1192/2024 stand allowed by confirming interim orders. The condition of attendance of Police Station stands cancelled.

(ii) In the event of arrest of applicant in **ABA No.1885/2024** in connection with Crime No. 0320/2023, registered with Umri Police Station, Dist. Nanded for the offence punishable under Sections 376(2)(d)(f)(i)(n),

376(3), 354(c) of the Indian Penal Code and Section 4, 6 of Protection of Children from Sexual Offences Act, 2012 and Section 66(e), 67 of Information Technology Act, 2000, **she** shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

(iii) **She** shall not contact the witnesses directly or indirectly.

(iv) **She** shall not interfere with the evidence in any manner whatsoever.

(v) **She** is further directed to cooperate the investigating agency for further investigation.

(vi) Fees of appointed Advocates is quantified at Rs. 10,000/- each to be paid by High Court Legal Services Authority Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

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