

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2872 OF 2024

Rushikesh Ganesh Shelke

..... Applicant

VERSUS

State of Maharashtra & Anr.

..... Respondents

Ms. Sheetal M. Ubale i/b. Mr. Rajaram V. Bansode for the Applicant.

Mr. Amit A. Palkar, A.P.P. for the State.

Mr. Krishna Tarde i/b. Mr. Prashant Hagare for the Respondent No.2.

CORAM : RAJESH S. PATIL, J.

DATE : 6th FEBRUARY, 2025

P.C. :-

1. This Court on 24th October, 2024 has passed the following

order :-

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

2. The applicant is apprehending arrest in connection with FIR No. 0706 of 2024 dated 31st August 2024 registered at Indapur Police Station, Dist. Pune, for offences under Sections 376 and 376(2)(j)

and Sections 4, 6 and 8.

3. Since offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) are also registered, the victim (informant) has been made party-respondent No.2.

4. Notice will have to be issued to the said respondent. But, the learned counsel for the applicant is pressing for interim relief in the meanwhile.

5. The learned counsel for the applicant has read the statement of the informant, leading to registration of the FIR, and he has referred to certain *Instagram* chats exchanged between the two, as also contents of transcription of alleged conversation between the applicant and the mother of the informant(victim). He relied upon the same to press for interim relief.

6. The learned APP submits that the ingredients of the serious offences registered against the applicant are clearly made out and therefore, no indulgence may be shown to the applicant.

7. This Court is inclined to grant interim relief in the present application, for the following reasons :

(i) The initial portion of the statement of the informant, leading to registration of the FIR, shows that general allegations are made for the years 2021 – 2022 as regards the sexual abuse by the applicant. It is from June 2023 onwards that the informant has given some details about incidents of physical intimacy between the applicant and the informant. In June 2023, the informant was already 17 years 4 months old, because her date of birth is claimed to be 28th

February 2006.

(ii) At the aforesaid stage, the informant *prima facie* could be said to be of an age of understanding and if from June 2023 onwards till June 2024, she had gone to various lodges with the applicant, where they spent time together, *prima facie* it appears that the relationship between the applicant and the informant was consensual.

(iii) Although, till February 2024 i.e. when the informant turned a major, technically it could be said that even if the relationship was consensual, consent was meaningless because the informant was minor, considering the fact that the informant could be said to be a girl having sufficient understanding, particularly with the exposure now available to youth with internet and mobile apps, *prima facie*, it can be said that the allegation of forceable sexual intercourse at every stage appears to be exaggerated.

(iv) The allegation regarding false promise of marriage also has to be viewed in the light of the observations made hereinabove.

(v) The applicant is ready to cooperate with the investigation.

8. For the aforesaid reasons, the case for granting interim relief is made out.

9. Issue notice to respondent No.2, returnable on **2nd December 2024 (High on Board)**.

10. In the meanwhile, the following interim order is passed :

(a) Till the next date, in the event the applicant is arrested in connection with FIR No. 0706 of 2024 dated 31st August 2024 registered at Indapur Police Station, Dist. Pune, he shall be released on bail on furnishing PR Bond of Rs.30,000/- and one or two sureties in the like amount.

(b) The applicant shall remain present before the Investigating Officer on 26th and 28th October 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.

(c) The applicant shall cooperate with the investigation, including surrendering his mobile phone and remaining available for medical examination, if so required.

(d) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

11. In the event, the applicant violates any of the aforesaid conditions, the order passed today would be recalled.

12. List this application for further consideration on 2nd December 2024 (High on Board).

2. The learned A.P.P. submits that as per the directions given in the order dated 24th October 2024, the applicant has surrendered his mobile phone with the concerned police station. So also, the

applicant has co-operated with the police and has attended the police station on 26th October 2024 and 28th October 2024. As of today, the police are satisfied as far as the investigation is concerned, with the statement given by the applicant. Learned A.P.P further submits that the charge-sheet has also been filed.

3. Mr. Tarde, learned counsel appearing for the respondent no.2 submits that though the applicant has co-operated with the police as far as his statement was to be recorded before the police. He submits that this Court has to consider the age of the victim and the time of the alleged incident. He submits that the applicant taking advantage of the tender age of the victim promised her that he will get married to her and later on, after having physical relationship with her, he went back on his words and refused to get married with the victim.

4. Ms. Ubale, learned counsel appearing for the applicant submits that in fact from the time of his relationship the

applicant had informed the victim that the marriage is not possible and the same can be seen from the photocopy of the chat exchanged between them, a copy of the same is enclosed at pages 31 and 47 of the anticipatory bail application. She submits that when the applicant got engaged with another lady, the mother of the victim along with the victim contacted that lady and gave certain wrong information, due to which the engagement of the applicant was broken. Learned advocate for the applicant submits that the applicant has co-operated with the police and will always co-operate with the police as and when called for to record the statement.

5. Taking into consideration the facts that the victim had been to various lodge with the applicant and they had spent time together, it appears that the relationship between the applicant and the victim was consensual. The investigation is completed and the charge-sheet has been filed. In my view, the interim relief granted by this Court on 24th October, 2024 requires to be

confirmed.

6. Hence, the following order :-

(a) The interim relief granted by this Court on 24th October, 2024 is hereby confirmed.

(b) Since the charge-sheet has already been filed and the applicant having submitted his mobile phone with the police and the police not required the custody of the applicant, so also the applicant has already released on bail, apart from the conditions which are mentioned in the earlier order dated 24th October, 2024, one more condition is imposed upon the applicant that the applicant will not enter within the jurisdiction of Indapur Police Station, Pune for a period of one year.

7. The **anticipatory bail application is accordingly disposed of.**

[RAJESH S. PATIL, J.]