

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3587 OF 2024

Yash Sandip Konde ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Sudip Pasbola, Senior Advocate a/w. Mr. Piyush Toshnival, Mr. Aadarsh Konde-Deshmukh, Ms. Mrunal Bhide, Mr. Swaraj Sable, Mr. Rajan Gurnani and Mr. Sainath Garade i/b. Mr. Ashish Pawar for Applicant.

Ms. Ranjana Hamane, APP for Respondent No.1-State.

Mr. Naagesh S. Khedkar for Original Complainant / Respondent No.2.

CORAM : MANISH PITALE, J.
DATE : JANUARY 17, 2025

P.C. :

. Heard Mr. Pasbola, learned senior counsel for the applicant, Ms.Hamane, learned APP for the respondent-State and Mr. Khedkar, learned counsel having instructions to appear on behalf of the first informant.

2. The learned senior counsel appearing for the applicant submits that although by an earlier order dated 26.09.2024, this Court had dismissed an earlier anticipatory bail application filed on behalf of the applicant bearing Anticipatory Bail Application No.2620 of 2024, as withdrawn, certain material could not be brought to the notice of this Court, which is crucial and that, in the interest of justice, this Court may consider the aforesaid material in order to pass appropriate orders in the present application.

3. The applicant is apprehending arrest in connection with FIR No.0088 of 2024 dated 29.02.2024 registered with Rajgad Police Station, District - Pune Rural, for offences under Section 376(i) of the

Indian Penal Code, 1860, as also Sections 3, 4, 5(f), 5(m), 6, 7 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4. It is submitted that when the said earlier application was heard, although the sworn statements of the victim and the first informant i.e. her father were already recorded before the Magistrate, since they were not available with the applicant, such statements could not be brought to the notice of this Court. In that light, attention of this Court is invited to the statements of the victim and the first informant recorded under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is submitted that the contents thereof would show that the allegations were levelled against the applicant on misunderstanding and that neither the first informant nor the victim have any grievance against the applicant. It is submitted that even before the Sessions Court on 21.11.2024, the first informant had given a written statement, in line with his statement recorded under Section 164 of the Cr.P.C. On this basis, it is submitted that this Court may consider allowing the present application, although this is the second anticipatory bail application of the applicant.

5. The learned APP submits that on earlier occasions, anticipatory bail applications of the applicant were dismissed by the Sessions Court and this Court. Statements of the other students travelling in the school bus have been recorded, which indeed record that the applicant was driving the school bus on the date and time of the incident, thereby showing his involvement as alleged in the FIR. It is indicated that the investigation is complete and that the charge-sheet was filed on 26.04.2024.

6. The learned counsel appearing for the first informant has tendered affidavit dated 17.01.2025, wherein the first informant i.e. the father of the victim has reiterated that the FIR was lodged due to

misunderstanding and the contents of the affidavit appear to be identical with the statement of the first informant recorded before the Magistrate under Section 164 of the Cr.P.C.

7. This Court has considered the contentions raised on behalf of the applicant in the light of the aforesaid material. Although earlier anticipatory bail application of the applicant was dismissed as withdrawn on 26.09.2024, this Court is of the opinion that the contents of the statements of the victim and the first informant i.e. her father recorded on 22.04.2024 before the Magistrate under Section 164 of the Cr.P.C. are crucial in the facts and circumstances of the present case. A perusal of the aforesaid statements recorded on 22.04.2024 would reveal that the minor victim has not stated about any overt act on the part of the applicant on the date and time of the incident. She has generally stated that she used to travel in a van driven by the applicant to her school. She has also stated about being unwell on the date of the incident but she has specifically responded in the negative to the question as to whether the applicant used to harass her. The first informant, in his aforesaid statement recorded under Section 164 of the Cr.P.C., has categorically stated that the allegations were made against the applicant due to misunderstanding. The victim was actually found to be suffering from urine infection and when the report was received from the doctor, according to the first informant, it came to light that the allegations were levelled against the applicant due to misunderstanding.

8. The written statement given on 21.11.2024 before the Sessions Court on behalf of the first informant is on the same lines and even the affidavit tendered today, sworn by the first informant, reiterates that the FIR was registered against the applicant due to misunderstanding. The said affidavit is taken on record and marked 'X'.

9. In the light of the aforesaid material, it appears that even when the

matter goes to trial, the prosecution may face difficulties in the backdrop of the stand taken by the victim and the first informant i.e. her father in the sworn statements recorded before the Magistrate under Section 164 of the Cr.P.C. It is an admitted position that the investigation is complete and the charge-sheet is already filed. In such circumstances, this Court is inclined to allow the present application.

10. 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.0088 of 2024 dated 29.02.2024 registered with Rajgad Police Station, District - Pune Rural, he shall be released on bail on furnishing PR Bond of Rs.50,000/- with one or two sureties in the like amount;
- B. The applicant shall co-operate with the further proceedings before the concerned Court;
- C. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

11. 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.

12. The anticipatory bail application is disposed of.

(MANISH PITALE, J.)