

ORDER BELOW EXH. 1 IN SPL(C) MA NO.270/2014.

This is anticipatory bail petition filed by applicant as per Sec.438 of Cr. P. C.

2] The say of applicant is that one Mrs. Shital Philip Sikandar, R/at-Eknath Bhale Chawal, Sambhaji Nagar, Gandhi Nagar, Pimpri, Pune has lodged complaint with Pimpri police station, for the alleged offence registered under S. 354-A, 506 of IPC and under S. 7 r/w 8 of The Protection of Children from Sexual Offences Act, 2012, dated 08-07-2014 vide CR No. 310/2014 against present applicant and, therefore, the applicant apprehends his arrest in the present crime.

3] It is the say of applicant that he is reputed person in the society and his reputation will be greatly harmed in case he is arrested or detained in custody. It is his further case that his wife Geeta is corporator. Along with one Mr. Kailas Kadam against whom criminal cases are pending and present complainant and her husband are closer to Kailas Kadam and they are residing near to each others house and applicant has decided to contest MLA election from Pimpri constituency and to create hurdle in the matter the said false complaint is lodged by political rivals of applicant and his wife viz. Kailas Kadam. It is the say of the applicant that there is apprehension of his arrest. The applicant is imminent Advocate of Pune District Court as well as Ex-President of Pimpri Chinchwad Bar Association. He is related with so many institutions and to damage his reputation, the complaint is lodged. So he prayed for bail.

4] State appeared and objected the application. State submitted that custody of applicant is required to recover the mobile phone and car used in the commission of the offence. So

police have strongly objected to grant the application and requested to reject the application.

5] I heard the submission of both the sides. Following points arise for my determination. I record my points and findings together with for the reasons stated below.

Points

Findings

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| 1] Whether applicant is entitled to bail ? | – Yes. |
| 2] What order ? | – Application is allowed. |

R E A S O N S

All points. :-

6] After perusal of complaint of complainant Sheetal Sikandar dated 8-7-2014, it is her say that on 07-07-2014 at about 8.30 p.m. she had gone to the office of Advocate/applicant along with Ruksana Qureshi and Saddam Qureshi and her daughter Simran. The said office is situated at Sant Tukaram Nagar, Pimpri and after discussion of the case, they all came down and Advocate Mr. Mancharkar asked her to wait. So she and her daughter waited and Ruksana and her son went away. Then Advocate Shri. Mancharkar came down at about 20.50 hours and removed his four wheeler vehicle. She did not know RTO registration number of the vehicle. Then she sat at front side and her daughter sat at the back side of the vehicle. Then he took the said car at Vallabhnagar ST stand near to wall and he pulled her and pressed her breasts and tried to kiss her. Then he received phone. So he alighted from the vehicle and went at back side and seated near to Simran and embraced her and pressed her breasts. Then she alighted from the vehicle and removed her daughter from the vehicle. Then he gave threat to her not to disclose this incident to anybody, otherwise she will involve her husband in false cases. Stating so, he went away. Then she gave call to 100 number and reported the matter to her husband on phone

and went to house and lodged the complaint on 8-7-2014 at about 3.15 hours. After reading the complaint as it is, it is very clear that she is not the client of Advocate Shri. Mancharkar. Why she had gone with Ruksana and Saddam, that she is not stating. It is pertinent to note that in the statement of Ruksana, it is came on record that on 7-7-2014, she met Shital Sikandar at 7 p.m. and she disclosed that she received phone of Advocate Shri. Mancharkar and he called them. Then she told her that after breaking the fast of Roza, they shall go at 8 p.m. and then they went there and they told Advocate about it. Then Advocate told them that he has not called them and why they came. Then they told that they came to make inquiry of her case. Then after 5 to 10 minutes, they waited there and came down from his office at about 8.30 p.m. That time, Advocate Shri. Mancharkar was sitting in the office. Then Sheetal told her that they should go and her husband is coming to receive her by motor cycle. Then they went away. Then at 10 p.m. she came to know about the incident. If we read the statement of Ruksana as it is, it is crystal clear that it is not matching with the statement of complainant Sheetal Sikandar. Nowhere complainant Sheetal had stated in the complaint that she is acquainted with Advocate Shri. Mancharkar earlier and he gave call to her on her mobile number and called her with Ruksana. It is pertinent to note that in the statement of Ruksana, she states Advocate Shri. Mancharkar asked them why they came there when they were not called. That means without calling Advocate Shri. Mancharkar, she narrated Ruksana that she received phone of Advocate Shri. Mancharkar and they called them if we read the statements of Sheetal and Ruksana. So visiting to the office of Advocate Shri. Mancharkar by both of them is doubtful and occurring of further incident as alleged on record.

7] In the complaint, she has not narrated the RTO registration number of vehicle in which allegedly they travelled and

incident occurred near to Vallabhnagar ST stand, nor she is stating the mobile number of Advocate Shri. Mancharkar, which she received as stated by witness Ruksana. In this case, mobile CDR record is collected by the Investigating Officer and it disclosed that the mobile CDR of accused shows that at the time of incident the tower location is near to D. Y. Patil College, Sant Tukaram Nagar, Pimpri. His tower location of mobile No. 9881665335 from 8.45 p.m. upto 9.56 p.m. is within the area of D. Y. Patil College, Sant Tukaram Nagar, Pimpri and tower location of Sheetal is at Vallabhnagar, Pimpri. If we peruse the mobile call detail record of complainant, during 19.51 hours upto 23.40 hours on the day of incident i.e. on 17-7-2014, there seems to be 20 calls on her phone, some she made, some she has received. After the incident, she talked with neighbours, husband. Then the statement of police on record that he contacted her on phone but she never gave proper instructions to him.

8] If we go through the documents filed along with bail petition, it seems that wife of applicant is corporator in Pimpri Chinchwad Corporation and at the relevant time the name of present applicant was in the race of MLA election. He was attending social functions and there was news in newspaper that he is proposed candidate for MLA. So, it is say and submission of learned Advocate of applicant that one Mr. Kailas Kadam, who is also corporator and political rival of applicant and his wife, had played this mischief of lodging of complaint through complainant during the crucial period of election against him and it is false complaint.

9] The learned Special APP Shri. Jadhav submitted before me police have to recover car used in the commission of the offence and mobile number of applicant and, therefore, custodial inquiry of the applicant is needed. This submission is not acceptable, because

in the complaint nowhere RTO registration number of car alleged is not stated nor the make or colour of the car is stated on record. Not only that the incident is alleged to be occurred near Vallabh Nagar ST Stand, which is crowded area. Not a single independent witness is examined by the prosecution on the point of incident. If we consider the political background alleged on record by the applicant, it seems that the complaint seems to be outcome of having smell of political rivalry between the complainant and his rival Kailas Kadam. It is also the say of learned Advocate of applicant that complainant is residing near to the house of Kailas Kadam. She and her family is related to the group of Kailas Kadam and engaged in some social institutions with them and with the help of complainant, applicant is involved. If we peruse the entire record of the case and documents, I say that there is some substance in this submission and there is possibility of involvement of applicant in the crime due to political rivalry.

10] Learned Advocate of applicant relied upon **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors. 2010 DGLS(Soft), 922 and Arnesh Kumar Vs. State of Bihar and Anr, Cri. Appeal No. 1277/2014 decided by Hon'ble Supreme Court of India.** In Siddharam Mhetre Vs. State of Maharashtra, 2010 DGLS (Soft),922 in para 122, it is observed by Hon'ble Supreme Court as under :-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail;

- i] The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii] The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii] The possibility of the applicant to flee from

justice ;

- iv] The possibility of the accused's likelihood to repeat similar or the other offences ;
- v] Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi] Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people;
- vii] The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern ;
- viii] While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused ;
- ix] The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant ;
- x] Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11] Relying upon **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors. 2010 DGLS(Soft), 922,** the applicant is requesting to grant anticipatory bail to him. I rely upon this citation.

12] If we consider the entire case in hand, I found that there is prima facie sufficient material on record to say that due to some political rivalry, applicant is involved in the case. Therefore, it is necessary to protect him by way of anticipatory bail order. So I am of the view that application is to be allowed in the interest of justice and I answer the points accordingly and proceed to pass the following order.

ORDER

1] Application is allowed as under :-

In the event of arrest, applicant Adv. Sushil Harishchandra Mancharkar, he be released on anticipatory bail, in connection with CR No. 310/2014, registered at Pimpri Police Station, under Section 354-A, 506 of IPC and under S. 7 r/w 8 of The Protection of Children from Sexual Offences Act, 2012, on executing SB and PB of Rs.15,000/-, with one surety in the like amount, on following conditions.

- A] The applicant shall not tamper with the prosecution evidence in any manner.
 - B] The applicant shall co-operate with police for further investigation.
 - C] The applicant shall attend the Court on given date.
 - D] The applicant shall attend concerned police station on last Sunday of each month in between 11 a.m. to 2 p.m. till filing of the charge-sheet.
 - E] The applicant shall not enter within the residential area of complainant-victim girl, not to contact her on cell phone, not to meet her, not to tease and harass her.
- 2] Inform concerned police station accordingly.

Pune,
Dated/- 19-11-2014.

(Mrs. Prachi P. Kulkarni)
Special Judge, Pune (Under The Protection
of Children from Sexual Offences Act, 2012)

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment. Name of Steno : Shri. V. V. Bannur, PA. Court Name : Mrs. Prachi P. Kulkarni, District Judge,01, Pune. Judgment signed by P,O. on : 20-11-2014 Judgment uploaded on : 21-11-14 Date of PDF file : 21-11-14.