

ORDER BELOW EXH.1

1] This application has been filed by the applicants for seeking pre-arrest bail u/s. 438 of Code of Criminal Procedure in connection with CR No. 382/2021 registered with Loni Kalbhor police station for the offences p/u/s. 354,354-D and 506 of Indian Penal Code and p/u/s. 8,12 of Protection of Children from Sexual Offences Act. [Hereinafter Indian Penal Code referred to as "IPC" and Protection of Children from Sexual Offences Act referred to as "POCSO Act" for the sake of brevity.]

2] The prosecution has filed say and opposed this bail application. The first informant appeared as an intervener and filed say. The informant has resisted granting bail to the applicant and filed photographs and whatsapp chats, e-mail. Further, the intervener has filed copy sent to P.I. Lonilakbhor police station dated 11.07.2021 and transcript of telephonic talks of brother of the applicant and father of the victim.

3] Heard Ld. Advocate for the applicant and Ld. APP for the State. Perused application, say filed by the prosecution. Further, perused documents tendered by the informant and the applicant. The applicant has filed on record Instagram chats of the victim and the applicant. The applicant has produced photographs of the victim, applicant, sister of the applicant.

4] It is the case of the prosecution that the victim is the daughter of the informant and her age is 17 years and 10 months at the time of



lodging the report, the victim is student of Angel High School, Sambhaji Nagar, Kadamwak Vasti and the applicant is three years senior to her and he was harassing the victim for one or other reasons. Since 2017 he was trying to make contact with the victim and stalking her. The victim neglected the applicant. In the year 2018 when the victim had been at AKS Club, Kadamwak Vasti for Badminton, the applicant expressed his love to her. At that time, the victim scared. The applicant cut his left hand by pointed sharp edged article and told her that he will commit suicide on railway track, if she will not love him. By taking disadvantage of the victim, the applicant snapped photograph with her and obtained passwords of her Instagram and snap chat accounts. The applicant called the victim to meet him and touched her inappropriately and outraged her modesty.

5] In March-2021 the victim took family members in confidence and disclosed act of the applicant. Family members of the victim went to the house of the applicant at Kunjirwadi and informed that the victim is minor and unable to understand. Then family members of the applicant informed that the applicant will not harass the victim. Thereafter also, the applicant gave messages on e-mail and harassed her. On 10.07.2021 when the victim and family members were at Kiga Ice-cream parlour, Pune Solapur road, Kunjirwadi, where the applicant followed her. The victim scared and they all went away. The applicant repeatedly took disadvantage of her minor age and gave her threat to commit suicide and outraged her modesty.

6] It is argued by Ld. Advocate for the applicant that the victim

is 17 years and 10 months old and she told incidences in March-2021, though allegedly the applicant was stalking her since 2017. Chatting proudded by the applicant discloses that mother of the victim was chatting with the applicant from the account of sister of the victim. The applicant and the victim roamed together. On 15.02.2021 there was birthday of the applicant and the victim gifted photo album to him. There was no sexual intent and allegations also not there in respect of commission of sexual assault. Therefore, there is no necessity of custodial investigation. Hence, prayed for allowing the application.

7] The Ld. APP has urged that at the stage of investigation, custody of the applicant is necessary. It is necessary to investigate how the victim was harassed by the applicant.

8] It is argued by Ld. Advocate for informant that telephonic talk of brother of the applicant with the informant is necessary to consider. The police are not taking action and therefore, informant moved an application to the police on 18.07.2021. The applicant compelled the victim to follow his instructions and compelled her to respond his one sided love by keeping her under pressure by giving threats of suicide. Thus, prayed for rejection of the application. Perused written submissions tendered by the Advocate for the informant.

9] It indicates from FIR that there are allegations against the applicant that he expressed love to the victim in the year 2018 and thereafter, he gave threats to the victim that he will commit suicide if the victim would not accept his love and called the victim to meet him.





He snapped his photographs with the victim and obtained passwords of instagram and snap chat accounts of the victim. Perused statements of relatives of the victim. They have made allegations against the applicant by reiterating as per the report lodged by father of the victim.

10] Perused statement of the victim. Her age is 17 years and 10 months. That means she is at the verge of attaining majority. Thus, her age is age of understanding. She has stated that in the year 2018 near to AKS Club, the applicant restrained her and expressed his love and asked her decision. After 2-3 days again the applicant restrained her and asked her decision. At that time she refused his love and slapped him as per his say and then immediately the applicant cut his left hand by sharp pointed article. Further she has stated that she received message from her friend that applicant gave message to her that if she could not meet him, he will commit suicide and therefore, she started talking with the applicant. Thereafter, she had stated incident at Ice-cream parlour dated 10.07.2021 that the applicant followed her. Further she had stated that repeatedly the applicant sent her messages and obtained passwords of her snap chat and instagram accounts. Further she has stated that in March-2021 mother of the applicant told they will pick up the victim from their house. Then her father gave understanding to the family members of the applicant and family members of the applicant gave assurance that the applicant will not harass the victim. In spite the same, the applicant gave messages to her.

11] In this background, perused chatting of the victim and the applicant produced on record by the applicant and the informant.

Prima facie it discloses that the applicant has given one album of photographs with messages on the birth day of the applicant. It nowhere prima facie discloses that it was given by the victim to the applicant under pressure or compulsion. On the contrary, prima facie it discloses that it was given by the victim with love and accordingly, she expressed the same in her writings. Further it seems that in some photographs sister of the victim has also accompanied them and also it discloses that the victim roamed with the applicant at various places. The chatting produced on record discloses that even the parents were involved in chatting.

12] In the facts and circumstances, it seems from police papers that the investigation of the crime is in progress. Prima facie there are no allegations of sexual assault against the applicant. The applicant is 21 years old. That means he is in his early 20's. Considering nature of the allegations it appears that custodial investigation of the present applicant is not necessary. Pre-arrest bail is to be granted to the applicant by giving specific directions that he shall co-operate to police machinery for investigation and also it is necessary to impose certain stringent conditions upon the applicant while granting his pre-arrest bail. Thus, this application is to be allowed. With this I proceed to pass following order.

ORDER

- 1] The application is allowed.
- 2] In the event of arrest in connection with C.R. no. 382/2021 registered with Loni Kalbhor police station for the offences p/u/s. 354, 354-D and 506 of Indian Penal Code and p/u/s. 8,12 of Protection of Children from Sexual Offences Act, the



Corrected u/s 362 of
CrPC being typographical
mistake

Cri. Anticipatory Bail Application No. 4774/2021
CNR No. 010469-2021

applicant **Pushmar Machindra Kotwal** be released on executing
P.R. bond of Rs.35,000/- with solvent surety in the like amount.

- 3] The applicant shall attend concerned police station on every Monday between 10.00 a.m. to 11.00 am. till filing of the charge-sheet and also attend concerned Police Station as and when called by the Investigating Officer.
- 4] The applicant shall cooperate investigating machinery.
- 5] The applicant shall not tamper the prosecution evidence in any manner.
- 6] The applicant shall not harass, threat and pressurize the victim and her family members.
- 7] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.

Pune.
Date - 01.09.2021.


(S.P. Ponkshe)
Addl. Sessions Judge, Pune.