

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State. Perused reply filed by original complainant. Heard Advocate of original complainant.

2] This bail application is filed under section 438 of Cr.P.C. by applicant in respect of apprehension of his arrest in C.R. No.87/2021 registered at Wanwadi Police Station for the offence punishable under section 354, 354A, 323, 504 of the Indian Penal Code and under section 8, 12 of the Protection of Children from Sexual Offences Act, 2012. First informant is mother of victim aged about 11 years. In 2016, first informant was acquainted with applicant as applicant was political person and first informant was doing social work. In 2014, applicant kept forcible sexual intercourse with first informant under pretext of giving good post in Rashtravadi Congress Political Party. At that time, due to threats given by applicant no report was filed. Later on, applicant repeated the act, so in 2019 she gave report in Kondhwa police station. On 27.2.2021 first informant and victim went at Wanwadi, Pune and at 9.30 pm they were returning to house from their two wheeler, applicant came with his white coloured Alto car behind them and obstructed them by his four wheeler. By alighting from four wheeler, applicant abused and beat first informant by stating that due to registration of offence she did not harm him. Victim was with first informant, then applicant pulled victim near him, touched her chest inappropriately, moved his hand from her back and touched her private part. He threatened victim that he committed rape on her mother and will not leave victim also, he thereby outraged modesty of

victim. They both were in frightened condition and her mental condition was also not proper. So, on that day report was not filed, but later on, on 4.3.2021 report was filed.

3] According to applicant he is falsely implicated in this matter. He is social worker having good reputation in society as well as political field. He contested Election for Pune Municipal Corporation in 2015. Though first informant lodged report for offences u/s. 376, 376(2) and 506 of Indian Penal Code in CR No. 617/2019, vide Cri. Bail Application No. 3560/2019 protection u/s. 438 of Cr.P.C. was granted in his favour. In that CR, his brother filed application/complaint to Commissioner of Police that prior to registration of crime first informant was blackmailing her by giving threat of filing false case. Actually no such incident u/s. 376 of Indian Penal Code had taken place. Later on, first informant herself filed affidavit stating that she was not having grievance, therefore after completion of investigation, 'B' summary report was filed by concerned police before J.M.F.C. Court Cantonment Court, Pune. Thereafter, applicant filed petition before Hon'ble High Court for quashing of FIR, but Hon'ble High Court observed that B' summary is filed, without prejudice to the rights and contentions of the parties, they disposed of petition as infructuous.

4] After that in the present matter, applicant is falsely involved only to blackmail him though no such incident had taken place. There is CCTV footage and on that basis one can gather the facts that alleged incident has not taken place. Applicant is 46 years old and social worker. His political career will spoil if he is arrested. Further, his

family members are depending on him. He is resident of Kondhwa, Pune. He has no criminal antecedents. Due to levelling of offence punishable under section 354, 354A of Indian penal Code and section 8, 12 of POCSO Act, there is apprehension in the mind of applicant and he prayed to grant protection under section 438 of Code of Criminal Procedure.

5] Investigating office and APP objected this application on the ground that investigation is in progress. FIR is filed against applicant by mentioning his name. Previously also, first informant filed CR No. 617/2019 for offence u/s. 376, 506 of Indian Penal Code i.e. similar type of offence. Vehicle used in offence is to be seized. Applicant will pressurize victim, witnesses, so they prayed to reject the application.

6] Allegations against the applicant are serious. From statement of first informant and victim, role attributed to applicant can be gathered. There are allegations of inappropriate touch to victim by applicant to her chest, private part and back. Applicant threatened victim. According to applicant, previously he was involved by first informant in offence u/s. 376, 376(2)(n), 506 of Indian Penal Code. He filed on record copy of that FIR, copy of order below Exh.1 in Bail Application No. 3560/2019 in which protection u/s. 438 was granted in his favour. Copy of affidavit of first informant about denying the allegations. Copy of complaint application by applicant to Commissioner of Police, copy of order of Hon'ble High Court in Criminal Application No. 1215/2019 in which due to filing of 'B' summary petition was disposed of which was filed for quashing of the

FIR, his Election Identity Card, copy of 'B' summary report along with police papers and copy of FIR in the present matter. APP and Investigating Officer stated about progress in investigation and Advocate of first informant submitted that yet previous 'B' summary report is not accepted by Court, therefore same is still pending.

7] Advocate of applicant filed undertaking of applicant stating that he is ready to surrender his vehicle i.e. white coloured Alto Maruti Car and affidavit of his brother who stated that said vehicle was surrendered before Wanwadi police station on 22.3.2021 and panchanama in that regard was prepared. Advocate of applicant relied on authority cited in **Sushila Aggarwal and others V/s. State (NCT of Delhi) and another, Special Leave petition 7281-7282 of 2017, dt. 29.01.2020**, in which it is observed that in exceptional cases, a person may give information without presenting himself before police officer who is investigating an offence, for that purpose he may write letter and give such information, may send telephonic or other message to police officer. At the time of granting protection, conditions can be imposed and one of such conditions can even be that in the event of police making out a case of a likely discovery u/s. 27 of Indian Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating discovery. Besides, if and when occasion arises, it may be possible for prosecution to claim benefit of section 27 of Indian Evidence Act in regard to the discovery of facts made in pursuance of information supplied by person released on bail.

8] On the basis of ratio laid down in above cited ruling,

Advocate of applicant submitted that recovery of vehicle is one of the ground in police reply and brother of accused surrendered that vehicle, so for that purpose, it is not proper to interrogate applicant by taking him in custody. Analogy laid down in above cited ruling is noted, but in case in hand, investigation is going on after registration of offence. No doubt, previously offence u/s. 376 of Indian Penal Code was registered against applicant in which on the basis of affidavit of first informant 'B' summary report is pending. But, it also shows that there are criminal antecedents. Moreover, victim in this matter is only 11 years old. Applicant is 46 years old having political background. Therefore, as there is nothing on record that her statement u/s. 164 of Cr.P.C. is recorded, there is every possibility of tampering prosecution evidence by giving threat and pressure to victim and witnesses. In police papers there is supplementary statement of first informant, statement of victim and one witness. So, as still investigation is going on, due to nature and gravity of offence and above reasons, it is not proper to grant protection u/s. 438 of Cr.P.C. in favour of applicant. Hence, application deserves to be rejected with following order:

ORDER

Application is rejected.

Pune.
Date – 24.3.2021.

(R.V.Adone)
Addl.Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau. Arya Nikam (Stenographer G-1)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 24.3.2021.
Order signed by P.O.	- 25.3.2021.
Order uploaded on	- 26.3.2021.