

ORDER BELOW EXH.1

1] This application has been filed by the applicant for seeking pre-arrest bail u/s. 438 of Code of Criminal Procedure in connection with CR No. 101/2023 registered with Kothrud police station for the offences p/u/s. 354 of the Indian Penal Code and p/u/s. 9(n) and 10 of the 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 original informant appeared and filed say and strongly opposed this bail application by making allegations against the applicant that he pressurized her to withdraw the complaint and made allegations of illtreatment to her by the applicant, who is her husband. The informant appeared through her advocate. She has filed transactions screen shots between applicant and Mr. Pravin Jarde total amount of Rs. 99,000/-, whats app chat between the applicant and the informant from February-2023 to April-2023, photographs of the informant along with the relatives.

3] Heard Ld. Advocate for the applicant and Spl. P.P. for the State. Perused application, say filed by the prosecution and police papers. Perused documents tendered by the applicant i.e. copy of Divorce petition of the informant and the applicant filed under section

13(B) of the Hindu Marriage Act, complaint lodged by the mother of the applicant against the informant and Pravin Nagesh Jarde, who is working in police department. The applicant has filed photographs and the applicant has given an affidavit and disclosed that the photographs filed on record is of his wife and Pravin Jarde together and the said photographs, he found on the status of his wife on whats app and he obtained screen shot of the same and produced on record. Further the applicant has produced on record voluminous documents i.e. Discharge papers of the informant dated 15.01.2023, the amount called by the informant from Pravin Jarde in the account of the applicant on 15.01.2023, the messages sent by Pravin Jarde to the applicant on 17.03.2023, the amount sent by the applicant to Pravin Jarde Rs. 10,000/- on 17.03.2023, whats app chat of the daughter i.e. victim with the applicant from 14.03.2023 to 22.04.2023, news of suspicion order published in Lokmat and Sakal newspaper of Pravin Jarde, complaint lodged by the applicant on 01.06.2023, copy of N.C. no. 631/2023 dated 01.06.2023.

4] The investigating officer has tendered call record location of the applicant and not filed CCTV footage dated 24.05.2023 and 01.06.2023 to show the presence of the applicant as argued by the informant, due to unavailability and accordingly tendered the documents.

5] It is argued by Ld. Advocate for the applicant that the wife of the applicant has lodged a report against him by making allegations

of commission of sexual assault upon the daughter. The father of the applicant expired on 02.012.2022 and on 10.12.2022 the informant has kept PSI Shri. Jarde as a tenant in the room and he paid huge rent amount. On 07.04.2023 the present crime has been registered against the applicant and PSI Jarde has been suspended by the police department. There is matrimonial dispute between the first informant and the applicant. They have filed petition for seeking divorce by mutual consent on 08.03.2023. There is extra marital affair of his wife i.e. first informant with PSI Jarde. Ld. Advocate for the applicant has tendered the photographs of the informant and PSI Jarde and according to the applicant, the said photographs were kept by the first informant on her whats app status.

6] It is further argued that the first informant has used daughter and falsely implicated the applicant in the present crime. There is no question of recovery or discovery in the present crime. Therefore, there is no need of custodial investigation of the applicant. Hence, prayed for granting pre-arrest bail to applicant.

7] The Ld. Spl. P.P. has submitted that there is no recovery or discovery in the crime has no relevance and it is not a ground for granting anticipatory bail. The nature of the offence is serious. Custodial investigation of the applicant is necessary. There is statement of the victim recorded by the police. The victim is 14 years old girl and her statement was recorded before the Member of the Muskan Foundation Sustha. Hence, prayed for rejection the

anticipatory bail.

8] While giving reply, it is argued by Ld. Advocate for the applicant that the informant was admitted in the hospital from 12.01.2023 to 15.01.2023. At the insistence on behalf of the first informant, PSI Jarde transferred the money in the account of the applicant for payment of the bill of the hospital. On 17.03.2023, PSI Jarde made demand of said money back and on the same day, the said amount of Rs. 10,000/- was transferred by the applicant in the account of PSI Jarde. The victim, who is daughter of the applicant has sent messages to the applicant on Whats app and said chatting is after the date of the alleged incident. The informant has made false allegations and prayed for allowing the application.

9] The FIR indicates that the informant who is wife of the applicant has lodged a report against the applicant on 24.04.2023, by making allegations against her husband that in her absence in the house on 26.01.2023 at around 12:30 pm., the applicant has caught hold the hand of daughter aged 14 years. He moved his hand on the hairs of the victim and touched her breast.

10] It reveals from the FIR that there were disputes between the first informant and the applicant since 2019, when the first informant started doing social work. Six months before lodging a report, the informant and her husband decided to take divorce. On 02.12.2022 father-in-law of the informant expired and six days

thereafter, the informant started to go for her work. Therefore, the applicant has doubted the character of the informant, disputes started between the informant and the applicant. Therefore, the informant used to remain outside the home for the work, to avoid the disputes.

11] The FIR further indicates that on 11.02.2023 the victim girl i.e. daughter of the first informant and the applicant, aged 14 years, stopped the informant to go outside the home. The victim told her that whenever the informant used to go outside, the father used to harass her. Thereafter, she told that her father was moving his hand inappropriately on her breast and used to caught hold her hand. She dislikes it. She was scared of the applicant. Thereafter, she told the said incident was occurred on 26.01.2023.

12] Further the FIR discloses that she told about the same to the applicant and her mother-in-law. The mother in law gave understanding to the informant to keep quite, for the society. Therefore, she did not disclose the incident to anyone and decided to left the house. Accordingly, on 17.02.2023 the informant left the house along with the victim. The informant told the incident to her mother and her mother asked about the same, to mother-in-law of the informant.

13] On 22.02.2023 the informant, her mother and the victim came to Pune at Kothrud, in their house i.e. from the house of her mother. The applicant and mother-in-law accepted the guilt. The

mother of the informant and mother-in-law of the informant gave understanding to the informant and they both requested not to lodge a report. On 24.02.2023 the applicant left the house by informing younger sister of the first informant that, he would commit suicide. Upon knowing about the same from the daughter at 07:00 pm, the informant lodged missing report to Kothrud police station. Thereafter, on 26.02.2023 her husband return back. Then meeting was conducted of the family members and the relatives on 26.02.2023, wherein the applicant made allegations against the informant and he suspected character of the informant.

14] On 27.02.2023 the informant left the house and went to her friend's house at Balajinagar Katraj, Pune along with the victim and gave application to Kothrud police station. Thereafter, again the relatives of the first informant gave understanding to her and requested to come back to home, as the informant wanted to take divorce. The first informant returned to home and on 06.03.2023 she lodged divorce petition. It was decided that custody of the victim will remain with the first informant and custody of son would remain with the applicant.

15] Thereafter, on 11.03.2023 the applicant made quarrel and beat the informant. Therefore, the informant left the house on 13.03.2023 and went to Kothari colony Gultekdi, Pune. Thereafter, repeatedly the applicant gave phone calls to the informant and was asking the custody of the victim. In this background, the informant

has lodged a report on 24.04.2023 regarding the alleged incident dated 26.01.2023.

16] The statement of the victim was recorded on the same day and she reiterated the incident dated 26.01.2023.

17] Prima facie, it reveals that since the year 2019, there were disputes between the informant and the applicant. It reveals from the documents tendered by the applicant that, prima facie the informant and PSI Jarde are close to each other and that was the reason the informant had kept status of her photographs along with PSI Jarde on the whats app. Money transaction discloses that on the day of discharge, of the informant from the hospital, PSI Jarde transferred Rs. 10,000/- in the account of the applicant and later on 17.03.2023 the applicant transferred the amount received to PSI Jarde.

18] It appears that the victim has given SMS to her father i.e. applicant on 14.03.2023, 15.03.2023, 25.03.2023, 31.03.2023, 02.04.2023. On perusal of their conversation, it nowhere discloses that the victim got scared of the applicant, due to the alleged incident as allegedly occurred on 26.01.2023. Thus, prima facie it seems that the victim, who is daughter of the applicant, talking to her father without fear and in normal mood.

19] In such facts and circumstances of this case and considering the closeness of the informant with PSI Jarde and

disputes between the applicant and the informant due to suspicion on the character of the informant, filing of the divorce petition etc. needs to be considered while deciding this application. Further, prima facie it appears that there is delay in lodging the report, inspite of knowledge about the alleged act. All the entire incidents prima facie creates shadow of doubt regarding the contents of the FIR.

20] Therefore, considering the nature of the allegations, it appears that custodial investigation of the applicant is not necessary. Hence, it is just and proper to confirm the interim protection granted to the applicant. Therefore, application is to be allowed. With this I proceed to pass following order.

ORDER

- 1] The application is allowed.
- 2] Ad-interim protection granted is hereby confirmed.
- 3] In the event of arrest of the applicant **Machindra Baban Hawale** in connection with CR No. 101/2023 registered with Kothrud police station for the offences p/u/s. 354 of the Indian Penal Code and p/u/s. 9(n) and 10 of the Protection of Children from Sexual Offences Act be released on executing P.R.bond of Rs. 50,000/- with one surety in the like amount.
- 4] The applicant shall attend concerned police station on every Monday between 11.00 a.m to 2.00 p.m. till filing of the charge-sheet.

- 5] The applicant shall not tamper the prosecution evidence in any manner.
- 6] The applicant shall cooperate investigating machinery.
- 7] The applicant shall not harass, threat and pressurize first informant and witnesses.
- 8] Violation of any of the conditions imposed, shall amount the cancellation of bail forthwith.

Pune.
Date – 16.06.2023.

(S.P. Ponkshe)
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	-	Nitin M. Shinde (Stenographer G-3)
Court Name	-	Smt. S. P. Ponkshe, Addl. Sessions Judge, Pune.
Date of Order	-	16.06.2023
Order dictated on -		16.06.2023
Order transcribed on	-	16.06.2023
Order checked signed by P.O.	-	19.06.2023
Uploaded on	-	19.06.2023