



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.379 OF 2024

(Dhananjay s/o Mahadevrao Sayare Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.V. Sirpurkar, Advocate a/w Mr. V. Dongre, Advocate for the applicant.
Ms T.H. Udeshi, APP for the State.

Mr. K. Topale, Advocate h/f Mr. D.R. Bhoyar, Advocate for assist to
prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 31, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.215/2024 registered with Police Station Nandanvan, Nagpur for the offence punishable under Sections 294, 323, 354, 354-A, 354-B, 354-D, 392, 452, 506-B and 511 of the Indian Penal Code.

3. The applicant is serving as a Police Officer. The crime is registered on the basis of report lodged by the victim at Nandanvan police station stating that she is resident of Damangaon Railway and she has completed her B.Tech in Cosmetics and is pursuing her UPSC aspiration and has joined a test series classes at Nagpur, and therefore, residing in a rented premises along with her friend. Her father is working as a Police Head Constable and had attached to the Akola police station. Present applicant is a friend of her father who is working as a

Police Inspector and attached to Khadan police station at Akola. Due to the old relations with the father of the informant and he was on visiting terms at the house of the informant.

4. The applicant was well aware about the informant was staying at Nagpur for the purpose of her studies. He used to call her on her mobile phone and used to send messages as and when and also used to visit her room. It is alleged that, the present applicant was having ill-intentions and with sexual intent he used to communicate with her. On some occasions he used to communicate with her through video call. On 17/05/2024, he has abused her in a filthy language by saying “तु कॉलगर्ल आहे, तुझी आई धंदेवाली आहे” and also sent the text messages with the similar wordings. He has also abused her in a filthy language. She further alleged that through video call he has shown his private part to her and asked her to send her nude photographs to him as well as her photographs in a swimming costume.

5. On 18/05/2024, the applicant has obtained her phone location and called her. Thereafter at about 6:30 p.m. he came at her room and kept himself in a hiding condition, thereafter he entered in her room and again communicated with her in an obscene and filthy language. He asked her “तु कुठे होती, कोणासोबत होती, कोणासोबत झोपायला गेली होती”, “छिनाल रंडी कॉलगर्ल, सगळ्यात सस्ती कॉलगर्ल, तुला आयुष्य जगायला दहा माणसे

लागतात काय?” and thereafter he assaulted her. He also attempted to remove her top and outraged her modesty. Thereafter he snatched her mobile phone, abused her and left the place. Thereafter, she approached to the police station along with her friend and lodged the report. On the basis of said report, police have registered the crime against the present applicant.

6. Learned Counsel for the applicant submitted that the applicant was looking after the victim as she was residing at Nagpur and being a guardian he used to visit her room. He submitted that victim was calling him as a “Sugar daddy” and exchanged the various photographs with him. He further submitted that the conduct of the victim itself is sufficient to show her character. He further submitted that the applicant never visited the room of the victim and no such incident has taken place. Merely because the activities of the victim are restrained by the present applicant, he is implicated falsely. Even on perusal of the recitals of the FIR no offence is made out. He submitted that the statement of the Sakshi was never recorded and which reveals from the affidavit which is filed by the witness Sakshi before the Sessions Court. He further submitted that the alleged offences are punishable with imprisonment up to seven years for which the custodial interrogation of the present applicant is not required. He further submitted that the mother of the victim approached to the brother of the present applicant for settlement. The affidavit of the brother sufficiently

shows that only to extract the amount from the present applicant, this false FIR is lodged against him. Thus, considering the nature of the allegations, the custodial interrogation is not required. Hence, the applicant be protected by granting anticipatory bail.

7. Learned APP strongly opposed the application on the ground that the victim who is aged about 23 years was subjected for the sexual harassment by the present applicant due to which she was constrained to take medical treatment with Dr. Gupta. Said Dr. Gupta has forwarded her to another Psychiatrist and the said Psychiatrist statement is also recorded which shows that the victim has undergone the treatment as she was harassed by the present applicant. She further invited my attention towards the various statements of the witnesses and submitted that the presence of the applicant at the room of the victim is substantially established by these statements. She submitted that the CCTV footage i.e. the evidence in the nature of electronic evidence also substantiate the said contentions. She also pointed out that the statement of one of the Police Constable namely Ashish Gulabrao Amle shows that he was deputed by the present applicant to locate the location of the victim wherever she goes. Thus, it is sufficient to show that Senior Police Inspector has misused his office for harassing the victim girl. She further submitted that the entire investigation itself sufficiently shows the involvement of the present applicant. As far as the retraction of the

statement by the witness Sakshi is concerned she submitted that due to the influence by the present applicant who is serving as a Police Inspector, the witness Sakshi might have retracted from her statement, and therefore, only that reason is not sufficient to disbelieve the case of the victim. She submitted that considering that the present applicant is a Police Officer, if he is released on anticipatory bail, there is every likelihood of tampering of the witnesses and hampering of the investigation.

8. In support of her contention, she placed reliance on the *State of Jharkhand Vs. Sandeep Kumar [2024 ALL SCR (Cri) 740]* wherein anticipatory bail application of the police officer though the offences which are bailable and the offences for which punishment less than seven years is provided was not considered by the Hon'ble Apex Court. In view of that, she submitted that the application deserves to be rejected.

9. I have heard learned Counsel for both the parties. Perused the entire investigation papers. The recitals of the FIR shows that the victim was taking education at Nagpur, and therefore, she was residing on a rented premises along with her friends. It further reveals that there was a previous acquaintance as the present applicant was acquainted with the family members of the victim, and therefore, he used to visit at the room of the victim. As per the allegation, the present applicant who was serving as a Police Inspector at Akola has visited on several occasions at the room of the victim, likewise on

17/05/2024 he called her and used the obscene language while communicating with her. Such type of text messages was also sent to her and also demanded her nude photographs and photographs in a swimming costume. It is alleged that, the present applicant gave a video call and shown his private part to her as well as outraged her modesty on 18/05/2024 by lifting her top and also used the obscene words which are referred in earlier part.

10. To substantiate the said contention, during investigation, the Investigating Officer has recorded the statement of one Sakshi Babbutkar whose statement was recorded on the same day when the FIR was lodged that is on 18/05/2024. She substantiated the entire allegations made in the FIR, in her statement. Subsequently, she filed an affidavit before the Sessions Court that no such statement is recorded as she never visited the police station. This fact is substantiated by the CCTV footage. The CCTV footage panchamana shows that on 18/05/2024 the victim and the said witness Sakshi were seen proceeding in an auto rickshaw, after the incident. Thus, the CCTV footage sufficiently shows that the witness Sakshi was along with the victim after the incident. The statement of Dr. Subodh Gupta and one Dr. Shrikant Nimborkar are also recorded which shows that Dr. Subodh Gupta has referred the victim to Dr. Shrikant Nimborkar who is a Psychiatrist for the treatment. The statement of Dr. Gupta shows that he was treated the victim as victim has disclosed to him that one Police Officer namely

Dhananjay Mahadeorao Sayare who is a resident of Dhamangaon is harassing her, and therefore, she is undergoing the mental trauma. The statement of Police Constable Ashish Gulabrao Amale is also recorded by the Investigating Officer. From his statement, it shows that the present applicant approached to him by making him phone call and asked him to obtain the mobile phone call locations of mobile number 7028478231 which is of the victim. Thus, he has provided the mobile location of the victim to the present applicant on his demand.

11. The statement of one Rameshwar Marotrao Balpande is filed on record which is also recorded during the investigation. Said Rameshwar Marotrao Balpande is residing in a plot No.600, New Nandanvan, near N.I.T. complex, Nagpur wherein the victim is also residing. His statement shows that on 18/05/2024, when he was present in the courtyard of his house, at the relevant time one black color car came and entered into the compound. The applicant communicated with him and also shown him i-card. The police uniform was hanged in the said car and the person disclosed to him that his niece is residing in the said building, and therefore, he went in the said building to meet the victim and subsequently he came to know that the applicant came at the room and misbehaved with the victim. Thus, the statement of the various witnesses, CCTV footage and the statement of Sakshi Babhutkar substantiates the allegations which are levelled against the present applicant.

12. Admittedly, the offences alleged against the present applicant are punishable with less than seven years. At the same time, the status of the applicant is to be looked into. The applicant is a Police Officer. Due to the influence of the applicant it reveals that one of the witness has already retracted from her earlier statement. Grant of bail is discretionary but while using the discretion in favour of the applicant it is to be used in a judicious manner and not as a matter of course. The considerations that would normally weigh with the Court while dealing with a bail petition are the nature and seriousness of the offence; the nature of the evidence; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors relevant in the facts and circumstances of the case.

13. In the light of the well settled principles for grant of bail and in the light of the allegations made against the applicant who is a Police Officer, the observation of the Hon'ble Apex Court in the case of *the State of Jharkhand (supra)* relied upon by the learned APP are to be looked into wherein the Hon'ble Apex Court in para Nos.9 and 10 observed as under :

“9. In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of

law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the charge-sheet had already been filed against him, the possibility of his tampering with the witnesses and the evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest.

10. No doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief of pre-arrest bail. However, the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office.”

14. In the light of the above observations, in the present case also though offences alleged against the present applicant for which punishment is less than 7 years but considering the applicant is serving as a Police Inspector and the apprehension raised by the prosecution that if he is released on bail, definitely he would tamper the prosecution witnesses as well as would hamper the investigation is to be taken considerations. Moreover, the position of the applicant was as a guardian of the victim but it appears that he betrayed the trust of the victim and subjected her for sexual harassment which affected her mental fitness also. Thus, considering all these aspects, at this stage, no case is made out to use the discretion in favour of the present applicant. In view of that, the application deserves to be rejected.

15. The application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*