

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 13653
of 2023**

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KARTIK GULABBHAI VANJARA

Versus

STATE OF GUJARAT

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Appearance:

MR PREMAL S RACHH(3297) for the Applicant(s) No. 1,2

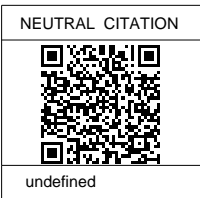
MR NK MAJMUDAR(430) for the Respondent(s) No. 1

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

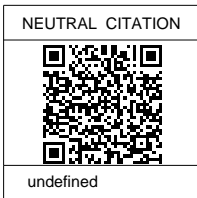
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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 07/11/2023****ORAL ORDER**

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants accused have prayed to release them on anticipatory bail in the event of their arrest in connection with the **FIR being C.R. No.11195010230440 of 2023 registered with Palanpur West Police Station, Dist. Banaskantha**, for the offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 and subsequently added Sections 354, 354(A)(1) (i), 342, 506(2) and 114 of Indian Penal Code, 1860 and Sections 8 and 18 of the POCSO Act.
2. Learned advocate for the applicants submits that the applicants have not committed the offence as alleged in the FIR and have falsely been enroped in the offence. It is worth to mention that there were two victims and they are hereinafter referred to as 'Victim A' and 'Victim B'. Victim A is major and Victim B is minor aged 15 years. Learned Senior Counsel for the applicants submits that, the Victim A was in relationship

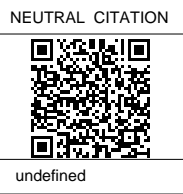


with applicant No.1. Applicant No.2 happens to be uncle of applicant No.1. Initially, the complaint came to be filed against unknown persons and it is an admitted fact that there was love affair between the applicant No.1 and Victim A and Victim A wanted to marry with applicant No.1 and later on, as family members of Victim A decided to find another person for her marriage, she contacted applicant No.1 and told him to take her with him. It is further alleged that when Victim A eloped with applicant No.1, one minor girl i.e. Victim B aged 15 years also came with Victim A and at that time, the applicant No.1 was not known about his age, but considering whats App and chat messages, Victim B who was major on her own will and wish eloped with applicant No.1. Mr. Unwala further submits that, initially no any allegation under the POCSO Act being invoked against the applicants and not uttered a single word to attract the provisions of the POSCO Act. But, considering the aforesaid facts and the statement recorded after a period of 35 days, provisions of Sections 8 and 18 of the POCSO Act being invoked against the applicants. It is further submitted that considering the aforesaid facts of the case, coordinate Bench of this Court has been pleased to read over the statement of the witnesses and pass an order of interim protection vide order dated 19.08.2023 and since then, the applicants are protected and joined the investigation. Therefore, nothing is required to be recovered from the applicants. It is further submitted that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicants are available during the course of investigation and will not flee from justice. In view of the above, the applicants may be granted anticipatory bail.



Learned Sr. Counsel for the applicants, on instructions, states that the applicants are ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicants accused to oppose such application on merits may be kept open.

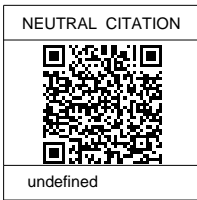
3. Learned Additional Public Prosecutor appearing on behalf of the respondent – State has opposed grant of anticipatory bail and submitted that initially complaint came to be filed by mother of minor girl – Victim B, wherein, it is clearly stated that her daughter was aged about 15 years. Then, subsequently, during the course of investigation, provisions of POCSO Act being invoked. Statement of the witnesses being recorded, from which involvement of the applicants is clearly revealed. Nonetheless, considering the material collected during the course of investigation, it appears that the applicants have not only abducted the minor Victim B, but they detained and compelled to make statement that they eloped with the present applicants. Investigation is at a preliminary stage. Statement under Section 164 of the Cr.P.C is also recorded, wherein, both the victims have clearly stated about the offence committed by the applicants. Considering the role attributed to the applicants, prima facie it appears that they have played active role. Ld. APP further submits that, so far applicant No.2 is concerned, though he was fully aware that both the victims being kidnapped in Fortuner car against their wish and will, he drew the car and compelled them to travel at Bharuch along with applicant No.1. Considering the aforesaid



facts, applicant No.2 has also played an active role with an intent to marry minor Victim B to younger brother of applicant No.1 and nephew of applicant No.2 and thereby, he abetted the offence. Hence, Section 114 of Indian Penal Code, 1860 is added. Videography and whats app chats are yet to be recovered from the applicants and in the guise of interim protection, applicants did not support the investigation.

In view of the above submissions, learned APP has prayed to dismiss the present application.

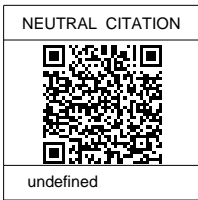
4. Learned counsel for the complainant has adopted the submissions made by learned APP and contended that, though in the complaint, it is clearly mentioned that the Victim B was minor, provisions of POCSO Act was not invoked at the relevant point of time, but at the time of hearing of anticipatory bail application, upon the direction issued by this Court, provisions of POCSO Act has been invoked subsequently. There was clear allegation against the applicants and at the time of offence, age of minor girl was 15 years. Nonetheless, the offence is committed and prima facie role of the applicants are revealed. The applicants have abducted the victims and illegally confined at their house at Bharuch and as the applicants are very influential people, no case is made out for anticipatory bail. He also drawn attention of this Court to the fact that, the complainant has also received threats from family members of the applicants and in this regard, he has also filed an affidavit which is produced on record. Further, the investigation is still going on. In such circumstances, he prays to dismiss the application.



5. Considering the arguments canvassed by learned counsel for the respective parties and material placed on record, it is an undisputed and admitted fact that both the victim girls were with the applicants and if we believe that there was love affair between the applicant No.1 and Victim A, then also, the age of the second Victim B was 15 years at the time of commission of offence. The applicants are charged with the provisions of Sections 8 and 18 of the POCSO Act. Considering the aforesaid facts and statement recorded under Section 164 before the learned Magistrate, wherein minor Victim B has clearly stated about the role of the applicants, from which offence under Sections 8 and 18 of the POCSO Act clearly made out.

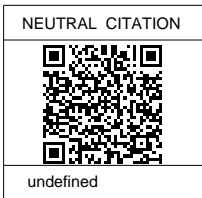
So far applicant No.2 is concerned, it appears that though he was well aware about the fact that victims were reluctant to travel with the accused persons, he abetted the applicant No.1 in abducting victims including minor Victim B and then, he drove Fortuner car and when accused persons found in the car in the company of Victim B, aunt of Victim B at Vadodara Express Highway near Jagdish Farsan in Ertiga Car, at that time also, present applicant No.2 has driven the car and fled away. From the investigation papers, it appears that the intention was to get marry Victim B with younger brother of applicant No.1 and nephew of applicant No.2, the applicants have abducted and detained the victims (one of them was minor), which clearly establishes the offence of POCSO Act.

6. It is further required to be noted that, merely the investigating agency has not initially invoked while registering the complaint or mentioned the offence under the POCSO Act in the complaint, is not a ground to consider the case that no



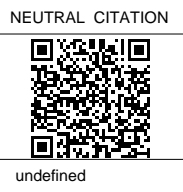
offence is committed under POCSO Act and that too in a complaint, it is clearly mentioned in complaint that the Victim B was minor aged 15 years. In any case, it was the duty of the investigating officer/agency to conduct thorough investigation in the offence and if *prima facie* offence is made out, then he/she has to register the complaint in that way, but in the case on hand, the investigating officer has failed/neglected to register the case and investigate the matter properly under the POCSO Act.

7. Even, from the earlier interim order passed by the coordinate bench of this Court, it appears that the statement of victim read over by the head constable before the Court and going through both the statements, more particularly the statement of Victims B who is minor, it clearly reveals that the offence under the POCSO Act being made out, however, at the relevant point of time, the police has not invoked the provisions of POCSO Act. But subsequently, when bail application is filed, at that time, said sections came to be added. Nonetheless, going through the investigation papers, it reveals that the applicants are highly influential persons and there is potentiality to dilute the investigation, which cannot be ruled out. Considering the decision of the Apex Court in case of **X Vs. State of Maharashtra**, reported in **2023 Online (Sup.) 279**, present application does not deserve any consideration.
8. Considering the object of POCSO Act and provisions of Article 15 of the Constitution of India, special act being introduced to address the issue properly and to protect the children adequately from misuse and abuse and for that special provisions being made and legislation being enacted to



provide protection of children from the offence of sexual assault, sexual harassment, pornography and with due regard of safeguarding the interest and well being of the child.

9. Here, the accused are facing charge of POCSO Act and as laid down by the Apex Court in the case of **State of Bihar Vs. Rajballav Prasad**, reported in **2017 (2) SCC 178**, while deciding the bail application, the Court has to take into consideration the presumption under Section 29 of the POCSO Act. Considering the aforesaid facts as well as the fact that initially complaint was filed against unknown persons and during the investigation, role of the applicants is revealed. It is needless to say that the complaint is not an encyclopedia.
10. In view of the above, statement of the Victim B recorded under Section 164 of the Cr.P.C also clearly suggests the role and involvement of both the applicants. So far role of present applicant No.2 is concerned, he has abetted an offence and forcibly took away the victims and drew the vehicle and while relative of minor victim girl came to rescue, at that time, he fled away. Considering the same, prima facie involvement of the applicants in the said offence is also revealed. Further, custodial interrogation is not required, is not a ground to allow the bail to the accused. Herein, the mobile phone, in which recording being done is yet to be recovered. Hence, custodial interrogation of the applicants is required.
11. Considering the facts of the case as well as the law laid down in a case of **Prashant Kumar Sarkar Vs. Ashis Chatterjee** reported in **2010 (14) SCC 496**, present application does not deserve any consideration.



12. Insofar as the submission on behalf of the applicants that in the present case, no custodial interrogation is required is concerned, it is worthy to mention that herein, prima facie case is made out against the present applicants and there are serious allegations of abduction and POCSO Act against the applicants. Thus, in order to reach to a logical conclusion of the investigation, the Investigating Officer deserves a free hand. There is no rule that if custodial interrogation is not required then anticipatory bail is required to be granted. The custodial interrogation is one of the good grounds to reject the anticipatory bail application, but merely because custodial interrogation is not required, itself is not a ground to allow the anticipatory bail application. In this regard, reference is required to be made to the decision of the Hon'ble Apex Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. reported in 2022 SCC OnLine (SC) 1529**, wherein it is observed and held as follows:

"In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail."

In view of the above decision and in view of the facts and circumstances of this case, custodial interrogation of not only the applicants, but all other suspect/s is therefore imperative to unearth the truth. Hence, this is a not a fit case to exercise the jurisdiction in favour of the applicants.



13. Further, in the case of **Pratibha Manchanda Vs. The State of Haryana**, reported in **AIR 2023 SC 3307**, wherein the Hon'ble Apex Court has held in Para 19 as under:

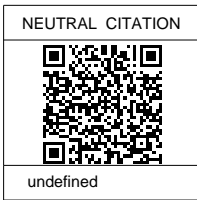
"19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice.

The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

14. Herein, I have gone through the material available against the accused very carefully, from which, it reveals that no complaint has been made with view to humiliating or tarnish the image of the present applicant. Even in **Jai Prakash Singh V/s State of Bihar and another**, reported in **(2012) 4 SCC 379**, Honourable Supreme Court pleased to hold:

"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty."

15. The object of anticipatory bail is that person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. In present case, no any such sort of allegation or bias is found out it is needless to say that order under



Section 438 of the Cr.P.C is not a passport to the commission of trial nor a shield against any serious accusation, which adversely affects the society.

16. This Court is of the considered view that if the present accused is equipped with protective order, it would obviously adversely affect the case of the prosecution and the qualitative investigation as the applicants are absconding, having trained legal mind and he will tamper with evidence and witnesses of prosecution.

17. In the above facts and circumstances and considering the observations on the legal aspect of the matter, this Court has absolutely no doubt that if applicants are equipped with such an order before they are interrogated by the Police, it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Having considered nature and seriousness of the charge, *prima facie* involvement of accused and possibility of tempering with evidences, it does not appear to be just and proper to exercise the discretion in favour of the applicants and accordingly, this application for anticipatory bail is **dismissed**.

18. After the above-mentioned order passed by this Court, learned Senior Counsel for the applicants prays that till filing of the bail application before the appellate forum, applicants may not be arrested. Considering the peculiar facts of the case as well as the conduct of the applicants, request made on behalf of the applicants does not deserve consideration and is not acceded to.

(HASMUKH D. SUTHAR,J)

SUCHIT