

Bhausahab Dnyandev Khodve And Other vs State Of Maharashtra on 25 June, 2020

Equivalent citations: AIRONLINE 2020 BOM 2657

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Bench: Mangesh S. Patil

aba 451 2020.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 451 OF 2020

- 1) Bhausahab Dnyandev Khodve,
Age 21 years, Occ. Agri.& wheelman,
r/o Jamdarwada, Tq. Karjat,
District Ahmednagar.
- 2) Ganesh Macchindra Ghalme,
Age 21 years, Occ. Agri. & Wheelman,
r/o Shinde, Tq. Karjat, District
Ahmednagar. ... Applicants.

VERSUS

The State of Maharashtra,
Through Police Station
Karjat, Dist. Ahmednagar ... Respondent.

...
Advocate for the Applicants : Mr. A.R. Avachat.
APP for the Respondent/State : Mr. N.T. Bhagat.

CORAM : MANGESH S. PATIL, J.

DATE : 25/06/2020 PER COURT :

The applicants are seeking bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. I-288/2020 registered with Karjat police station, District Ahmednagar, for the offences punishable under Section 354, 341, 506 of the Indian Penal Code and for the offence punishable under Section 8 read with Section 7 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as the 'POCSO Act').

2. The F.I.R. has been lodged by a victim girl aged 16 years and aba 451 2020.odt one month alleging that on 14.04.2020 in the afternoon when she was walking along a Kaccha road the applicant No. 1 arrived there on a motor-cycle, accosted and embraced her and insisted to have them photographed as a selfie. He managed to snap a selfie, threatened her of dire consequences if the incident was disclosed. It is thus alleged that the applicant No. 1 has committed the aforementioned offences.

3. So far as the applicant No. 2 is concerned it is alleged that he transmitted the photo to the relatives of the victim and when her father questioned him about his such conduct he threatened the father of the victim. The F.I.R. was lodged on 23.04.2020 and the crime was registered.

4. The learned advocate for the applicants submits that the applicant No. 1 is being falsely implicated. There has been an affair between the applicant No. 1 and the victim child. They have been in constant touch on phone as well their such relation is consensual one. The messages exchanged between them would reveal that the victim in fact was the instigator. She had consciously maintained the relations. She is matured enough to understand the consequences. There is a delay in lodging the F.I.R. which smacks of concoction. There is no need to have any custodial interrogation.

5. The learned advocate would further submit that going by the allegations all the necessary ingredients constituting the offence as defined under Section 7 of the POCSO Act cannot be made out. There was no sexual intent. No vital parts of the body were touched. His entire future would be ruined if he is allowed to be arrested without bail since he is of a tender age of 21 years.

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6. So far as the applicant No. 2 is concerned, the learned advocate submits that the only allegation against the applicant No.2 could be in respect of the offence punishable under Section 506 of the Indian Penal Code. He has not played any role in connection with the offences punishable under Section 354 of the Indian Penal Code or punishable under Section 8 of the POCSO Act.

7. Th learned A.P.P. opposes the application. He submits that the victim is a girl aged 16 years. There is no question of she having any consensual relation with the applicant No. 1. He should have taken necessary precaution while having conversation with her. There is no exception to the provisions of the POCSO Act. Her statement has been recorded under Section 164 of the Code of Criminal Procedure which corroborates her allegations. The applicant No. 1 having embraced her and managed to have a selfie is sufficient to prima facie make out his sexual intent.

8. As far as the applicant No. 2 is concerned, he has transmitted the photos to the relatives of the victim. Since the investigation is in progress custodial interrogation of both the applicants is necessary and the application may be rejected.

9. Apparently, the F.I.R. has been lodged by a victim who is a girl aged 16 years and one month. Though the applicant No. 1 has produced along with his application transcript of the messages exchanged between the applicant No. 1 and the victim, once it is found that the victim is a child

being a girl aged less than 18 years, there is no question of she being a consensual party. Rather, this circumstance can be looked at from another angle. In spite of the applicant No. 1 being aged 21 years as submitted by his learned advocate, his conduct aba 451 2020.odt in exchanging such texts with the victim can certainly be looked upon as an attempt to entice her. This is not a matter of kidnapping of a child. Section 7 of the POCSO Act inter alia only requires physical contact with a child with sexual intent. The conduct of the applicant No.1 in embracing her against her wish and having a selfie, at this juncture, is sufficient to demonstrate that it is a matter of molestation punishable under Section 354 of the Indian Penal Code and sexual assault as defined under Section 7 of the POCSO Act.

10. Considering all these aspects the very purpose of promulgating an Act like POCSO would be defeated if the accused are granted protection by way of anticipatory bail. In fact, by virtue of Section 29 of the POCSO Act, the Court has to presume that the accused has committed the offence under the Act and the onus is on the accused to rebut the presumption, which can happen during trial and not at this stage. Therefore, the applicant No. 1 in my considered view is not entitled to bail.

11. So far as the applicant No. 2 is concerned, the allegations do not involve him in the earlier episode of sexual assault. He is being alleged to have merely transmitted the photo to the relatives of the victim. In my view going by these allegations against him, his custodial interrogation does not seem to be imperative. There are no criminal antecedents against him and he can be granted bail.

12. The application is partly allowed.

13. In the event of arrest of the applicant No. 2 Ganesh Macchindra Ghalme in connection with Crime No. I-288/2020 registered with Karjat police station, District Ahmednagar, for the aba 451 2020.odt offences punishable under Section 354, 341, 506 of the Indian Penal Code and for the offence punishable under Section 8 read with Section 7 of the Protection of Children from Sexual Offences Act, 2012, he shall be released on bail on his executing personal recognizance for an amount of Rs. 15,000/- and furnishing a solvent surety in the like amount subject to following conditions :

(a) He shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate him till filing of the charge-sheet.

(b) He shall not tamper the evidence or influence the witnesses.

14. Application to the extent of applicant No. 1 is rejected.

(MANGESH S. PATIL, J.) mkd