



**IN THE COURT OF SPECIAL JUDGE UNDER THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES ACT, 2012 BORIVALI
DIVISION, DINDOSHI, MUMBAI.**

ANTICIPATORY BAIL APPLICATION 1983 OF 2022

(CNR NO.: MHCC05-006623-2022)

Shailesh Prajapati
R/at. Pathan Chawl,
Near-Jitwan Budhha Vihar,
Om Sasa, Kandivali East, Mumbai

..Applicant

V/s.

The State of Maharashtra,
(At the instance of Samta Nagar
Police Station vide C.R.No.1469/22)

...Respondent/State.

Appearance:-

Shri. Shukla, Advocate for the accused.
Shri. Ambekar, APP for the State/respondent.

**CORAM : HER HONOUR ADDL. SESSIONS JUDGE
SMT.S.M.TAKALIKAR, (C.R.NO.12)**

DATE : 19.12.2022

ORDER

Present application is filed by the accused/applicant under Section 438 of Code of Criminal Procedure for Anticipatory bail in connection with C.R.No 1469 of 2022 registered with Samta Nagar Police Station for offences punishable under Section 354, 354(A) of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

Facts in short of present application are as follows :

2. Accused is running classes. Complainant attended his tuition class. Her tuition class time in month of October – November 2022 was 2.00 pm to 6.00 pm. After class was completed tuition teacher/accused asked her to wait. She waited there. He tried to come close to her, caught her hand, kissed on her cheek, touched her waist, tried to snap photo on his mobile, outraged her modesty. Therefore she went to police station, lodged complaint of the incident. On the basis of said complaint above mentioned crime has been registered against the accused person.

3. Applicant in his application stated that he is innocent and reputed teacher running coaching classes since long back. He has not committed any offence. The intention is to damage his hard earn reputation. There are in all 300 students taking education in his coaching classes. The alleged incident took place on 01/10/2022. FIR is lodged on 05/12/2022. There is inordinate delay in lodging complaint. The complainant and her mother went to the police station but the complaint has been lodged by the victim itself and not by her mother. Competitors of the applicant tried to disturb the present applicant. Due to some personal grudge and rivalry present FIR is registered. False and fabricated story is prepared. The applicant is the victim of the case. No case is made out against him. No any prima facie case is made out against the applicant. Applicant has no criminal antecedents. His custodial interrogation is not required. He is permanent resident of Mumai. Hence prayed that application be allowed.

4. Prosecution has filed say below Exh.2 stating that there are chances of causing injury to the victim. The students taking coaching in

the tuition of the accused are frightened. The accused has outraged modesty of the victim in October-November. There are chances of tampering the evidence, chances of absconding. Hence prayed that application be rejected.

5. Ld. Advocate for the accused submitted that accused is teacher taking private coaching classes. He invited my attention towards the list of students. Accused has no criminal antecedents. He invited my attention towards the FIR and submitted that the date, time of the alleged incident is not mentioned. There is delay in lodging FIR. That delay is not specifically explained. No case is not made out. Class of the victim was not at 2.00 pm. There is violation of Section 23 and 24 of the POCSO Act. He further invited my attention towards the FIR and submitted that accused initially for the purpose of taking photograph put his hand on the waist of the victim. There is no sexual intention. Custodial interrogation of the applicant is not necessary. Due to personal grudge false complaint is filed. He relied on following case laws:

a) '**Apurva pandey v/s. State of Maharashtra**', BA 7308 of 2020,

b) '**Izak Naik V/s. State**', ABA 2676 of 2020

and submitted that there is no sexual intent. False case is filed. There is delay in lodging FIR. Custodial interrogation of the applicant is not necessary. Hence prayed that application be allowed.

6. Ld. APP submitted that victim is 14 yrs old. Accused is teacher has committed breach of trust of the complainant. There is sexual intent on the part of the accused. Victim has no personal grudge. Accused is permanent resident of U.P.. There are chances of absconding. Since registration of crime accused is absconding. Custodial

interrogation of the accused applicant is necessary. Hence prayed that application be rejected.

7. Investigating Officer has submitted that since registration of offence he has tried to contact the accused and his wife but both have switched off their mobile. They have not co-operated the police. Accused is absconding. The students are in frightened condition. In case ABA is granted then no student will come forward to state against the accused. Custodial interrogation is necessary. Hence prayed that application be rejected.

8. Perused application, say filed.

9. It is not in dispute that victim has attended class run by the accused. There are other students taking education in the coaching classes. Ld. Advocate for the accused submitted that due to personal grudge false complaint is filed but victim, her brother taken education in the coaching classes of the accused. There would not be any rivalry between the victim and accused. No any document has been prima facie brought on record that victim is in contact with competitors of the accused. Therefore at the very outset the submission of the Ld. Advocate for the applicant that due to personal rivalry this false complaint has been filed is not acceptable.

10. Ld. Advocate for the applicant submitted that there is no any sexual intent on the part of accused. For that purpose he relied on the case law of Hon'ble Bombay High Court ABA 7308 of 2020. I have minutely gone through the FIR. Ld. Advocate for the accused simply read that accused put his hand on the waist of the victim for taking

photograph on his mobile. But why accused wanted to take the photograph with the victim only though there are other students in the coaching classes has not been explained. He has read that much statement only, but not read further statement of the victim. victim further stated that accused kissed on her cheek, pulled her near him. Allegations of touching the waist, tried to take photograph with the victim and kissing on her cheek prima facie sufficient to satisfy ingredients of sexual intent mentioned in Sec. 7 of the POCSO Act. Therefore I do not find any substance in the arguments of Ld. Advocate for the applicant that there is no sexual intent.

11. Then coming to the point of delay in lodging complaint. Upon perusal of the FIR victim specifically stated that initially she was attending coaching classes from 6.00 pm to 8.00 pm but thereafter her class time was 12.00 pm to 2.00 pm. She was attending the class at 12.00 pm. She has specifically stated that in October 2022, but she do not remember the date on which accused stopped her on the pretext of her syllabus is remaining. Therefore she waited. That time accused tried to snap photograph in his mobile. Accused said to her that like her, he is looking fair, he caught her hand, kissed her but she was frightened. Again thereafter in November 2022 accused was starring at her, stopped her, caught her hand, she was frightened and since then she left attending class of the accused. No doubt she has not stated the exact date when the incident was occurred but she has stated month and year of the incident i.e. October-November 2022. It is true that incident occurred in November 2022, FIR is lodged on December 2022, but Ld. APP submitted that due to the exam of the victim she has not been to the police station. Delay in lodging complaint can be explained at the time of trial.

12. Ld. Advocate for the accused invited my attention towards the case law reported in ABA 2676 of 2020 and submitted that there is delay in lodging complaint. Therefore ABA has been granted. I have gone through the said case law. With due respect to the said case law in my opinion, ABA was granted only on the point of delay in lodging complaint but there was two other circumstances and there was 2 and half years delay in lodging complaint. In the case in hand, last incident taken place in November 2022, complaint is lodged on 05.12.2022. There is no inordinate delay. Moreover delay can be explained at the time of trial. Hence said case law is not applicable to the present case.

13. Then coming to the point of custodial interrogation of the accused. Upon perusal of the FIR it appears that for 2 times accused outraged modesty, he tried to snap photograph of the victim. Most important point in this case is that since registration of crime accused is absconding. The I.O. tried to call him on his mobile but it was switched off. Further the custodial interrogation is regarding the coaching class and for the medical examination of the accused is necessary. Further in case ABA is granted then there is possibility of tampering the witnesses. Investigation is just started. The students are witnesses. Accused would pressurize the students and restrain them from giving statement. Hence for the reason that accused would has co-operated the police, he is absconding, custodial interrogation is necessary. Statement of students is yet to be recorded, there are chances of tampering witnesses. Hence for all these reasons, in my opinion, it would not be just and proper to grant Anticipatory bail to the applicant. Hence his application deserves to be rejected and I pass following order:

ORDER:

1. Anticipatory Bail Application No.1983 of 2022 is hereby rejected.

2. Anticipatory Bail Application No.1983 of 2022 is hereby disposed off accordingly.

(S. M. TAKALIKAR)
Special Judge, under the POCSO Act
Borivali (Div), Dindoshi,
Goregaon, Mumbai.

Date : 19.12.2022

Dictated on : 19.12.2022
Transcribed on : 20.12.2022
Date of sign : 20.12.2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”**20.12.2022, 05.50 pm**
UPLOAD DATE AND TIME**Mrs. Revati V. Kadam**
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. S. M. TAKALIKAR ,(C.R.No.12) Addl. Judge.,City Civil & Sessions Court, Dindoshi
Date of pronouncement of /Order	19.12.2022
Order signed by P.O. on	20.12.2022
order uploaded on	20.12.2022