

Order Below Exh.1 in
Cri.B.Appln.No. 26/2022
Vijay Bhachand Bafna Vs. State and anr.

Heard: Ld.Adv. M. R. Aher for the applicant.

Ld. A.P.P. Ms. S. S. Sangle for the State.

I. O. present.

1. This is an application under section 438 of Code of Criminal Procedure in Crime No. 397/2021 registered at Ambad Police station for the offence punishable under sections 354, 504, 506, 509, 427 of the Indian Penal Code, 1860 and section 8 of POCSO, Act. It is the case of prosecution in brief that the applicant/accused had gone to the shop of the victim's mother to purchase cigarettes and on finding her alone, molested her by pressing her breast. When she raised an alarm, some people came to her aid, when the applicant assaulted them and also damaged her cart.

2. Ld. Adv. for the applicant has submitted that the description of the accused as mentioned in the FIR does not match the actual physical appearance of the applicant. The FIR has been lodged against an unknown person. In the FIR, it is mentioned that the accused was ugly and partly bald, whereas, the applicant is fair and good-looking and not bald. He has annexed the photograph of the applicant with the bail application to canvass this argument. Secondly, the applicant is a cigarette supplier and is well-known to the victim's mother (who is a cigarette retailer). He has no criminal antecedents. His Custodial interrogation is not necessary in the facts of the case. He is ready to abide by the terms and conditions imposed by the court.

3. Per contra, Ld. A.P.P. Ms. S. S. Sangle has opposed the application on the ground that although the FIR is against an unknown person, there are three eye witnesses to the incident who have identified the applicant as the miscreant/molester. In fact, they are the ones who took the applicant away from the spot. Therefore, merely because it is contended by the applicant that he is good-looking etc., cannot take away his identification by the eye-witnesses. The statements of these witnesses have also been recorded. Applicant was absconding after the FIR was registered. His custodial interrogation is necessary.

4. Perusal of the case-diary indicates prima-facie case against the applicant. Although the FIR is against an unknown person, there are three eye witnesses to the incident who have identified the applicant as the miscreant/molester. In fact, they are the ones who took the applicant away from the spot. Therefore, merely because it is contended by the applicant that he is good-looking etc., cannot take away his identification by the eye-witnesses. The statements of these witnesses have also been recorded. Applicant was absconding after the FIR was registered. Unless his custodial interrogation is granted, the investigating machinery will not be able to carry out proper investigation. In view of the foregoing discussion, I am inclined to reject the bail application.

: ORDER :

Application stands rejected.

Order is dictated and pronounced in open court.

Nashik
13/01/2022

Mridula Bhatia
District Judge-2 and Additional
Sessions Judge, Nashik.