

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4190 OF 2016

Santosh S/o Nana Nikam,
Age : 22 years, Occu.: Agri.,
R/o Pimprala, Tq. Nandagaon,
Dist. Nashik

.. Applicant

Vs.

The State of Maharashtra
Through Police Inspector,
Shivoor Police Station,
Tq. Vaijapur,
Dist. Aurangabad

.. Respondent

Mr. V.S. Janephalkar, Advocate for the applicant
Mr. V.S. Badakh, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.
DATE : 21/11/2016

ORAL ORDER :

Heard.

2. Present Application has been filed under Section 439 of the Code of Criminal Procedure, as the applicant has been arrested on 15/11/2015, in connection with Crime no.147 of 2015 registered at Shivoor Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Section 366, 363, 376 r/w. 34 of the Indian Penal Code, under Section 3(a), 4, 5(c)(t), 6, 8

of the Protection of Children from Sexual Offences Act and under Section 4, 5 and 6 of the Child Marriage Act.

3. The FIR has been lodged by grandfather of one Vanita on 15/10/2015, in which it is stated that his son Kailash, who was father of Vanita, had expired on 26/5/2014. Said Vanita, being aged 16 years, was found to be missing on 3/11/2015. Missing report was given on 7/11/2015. Thereafter, information was received that Vanita was married with the present applicant on 09/10/2015. According to the said report, the said marriage with Vanita was illegal, as she was aged 16 years and minor. His daughter-in-law – Kusum was also responsible for marriage of Vanita. After completion of investigation, chargesheet came to be filed on 11/2/2016. In this background, the applicant has filed the present application.

4. It is submitted by learned counsel for the applicant that as per the radiological opinion obtained from the Department of Forensic Medicine, Govt. Medical College, Aurangabad, Vanita was aged between 16 to 17 years on 17/11/2015. It is submitted that the marriage

in question took place with consent of Vanita as well as her mother, who was staying separately. It is further submitted that there was dispute between the brothers, as to the shares in the agricultural field and hence the report in question came to be filed. He submitted that as the chargesheet has been filed, there was no reason to continue the further detention of the applicant.

5. The Application is opposed by learned A.P.P. by relying upon the material collected by the prosecution. It is submitted that as per the certificate issued by the concerned College, the date of birth of Vanita was 12/1/2000 and hence she was a minor when the marriage took place. He has also referred to the other medical papers to indicate commission of offence under Section 376 of the Indian Penal Code.

6. From the material on record, it is clear that after completing the independent investigation, chargesheet has been duly filed on 11/2/2016. As per the radiological opinion, age of Vanita is stated to be between 16 to 17 years. Considering the margin of error that is permissible in such opinions, coupled with the

fact that the report in question has been lodged by grandfather of Vanita, I find that the applicant is entitled to be released on bail. No useful purpose would be served in detaining the applicant, when the chargesheet has been filed after completing the investigation. Applicant can be subjected to terms, so that he would be available when the trial commences.

7. Accordingly, the applicant is directed to be released on bail in Crime no. 147 of 2015 registered at Shivoor Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Section 366, 363, 376 r/w. 34 of the Indian Penal Code, under Section 3(a), 4, 5(c)(t), 6, 8 of the Protection of Children from Sexual Offences Act and under Section 4, 5 and 6 of the Child Marriage Act, upon furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount.

8. The applicant shall attend the Court of learned Sessions Judge, Vaijapur on 7th of every month or as per the directions of the learned Sessions Judge.

9. The applicant shall not take any steps to coerce the witnesses or tamper with the material collected by the prosecution.

10. It is clarified that the observations made in the present order are only for the purpose of deciding the bail application.

11. Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/