

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. ANTICIPATORY BAIL APPLICATION NO.2397 OF 2018

Javed Nawaj Shaikh

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....
Mr.S.I. Kantharia, Advocate for the Applicant.
Mr.S.R. Agarkar, APP for the Respondent – State.
Mr.Tadakhe, PI, Samta Nagar Police Station
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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 27, 2018.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.682 of 2018, registered with Samta Nagar Police Station, Mumbai, for the offences punishable under Sections 363, 366, 376(I) of Indian Penal Code (“IPC”, for short) and Sections 4, 8 and 12 of Protection of Children From Sexual Offences Act (“POCSO Act”, for short). First Information Report (“FIR”, for short) was lodged by the mother of the victim. In the FIR, it was alleged that the daughter of the complainant is aged 17 years and 4 months. She is a student of 12th standard. They received information that the victim and the accused got married and they

have visited Samta Nagar Police Station, Mumbai. Complainant relied upon the birth certificate of the victim, which indicate that her date of birth was 23rd June, 2001. It is, therefore, alleged that the victim was minor at the time of performance of the marriage with the accused. It is alleged that the accused had physical relationship with the minor girl and had thereby committed the aforesaid offences.

2 Learned counsel for the applicant drew my attention to the School Leaving Certificate, Hall Ticket of SCC examination and her Mark Sheet for HSC, which indicate that her date of birth was 23rd June, 2000. It is submitted by the learned counsel for the applicant that the victim was major at the time of alleged incident. It is also pointed out that the victim and the applicant has solemnized Nikah/Marriage. The Nikah/Marriage was performed before Quazi and affidavits sworn by the victim as well as the applicant were tendered. It is also submitted that statement of the victim was recorded by the police on 17th October, 2018, which also refers to performance of marriage. Applicant is aged 32 years. The victim stated that she is acquainted with the accused and she has decided to solemnize marriage with with him. She has also stated that she had relied on school leaving certificate for performing the marriage. In the

light of the aforesaid circumstances, it appears that the relationship was consensual. The dispute is with regards to the age of the victim. However, according to the complainant the girl was 17 years and 4 months and in accordance with the other documents, the victim appears to have completed 18 years.

3 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.2397 of 2018 is allowed;
- (ii) In the event of arrest of the Applicant in connection with C.R.No.682 of 2018, registered with Santa Nagar Police Station, Mumbai, he may be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report to Santa Nagar Police Station, Mumbai, as and when called by investigating officer, till the filing of the charge - sheet;

(iv) Anticipatory Bail Application No.2397 of 2018,
stands disposed of.

(PRAKASH D. NAIK, J.)