

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5175 OF 2017**

Ajit Baburao Pawar

Age : 54, R/A Flat No.E-1104,

Amit Bloomfield, S.No.59,

Near Express Highway, Ambegaon Bh, ...Petitioner

Pune City, Pune, Maharashtra 411046.

Versus

1. State of Maharashtra

(Thru Satara City Police Station,
vide CR. No. 563/2017).

2. Umesh Pralhad Pawar,

Aarfal, Tajee Satata,

Satara City, Satara,

Maharashtra-India.

... Respondents

Mr.Madhukar Pandurang Dalvi for petitioner.

Mrs.Sangita Shinde, APP for respondent No.1.

Mr.V.R. Gaikwad i/b D.S. Ghadge for respondent No.2.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ.**

DATE : 22nd OCTOBER, 2019

JUDGMENT (PER N.J. JAMADAR)

1. By virtue of this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the

petitioner has prayed for quashing and setting aside the first information report registered, vide C.R. No.563 of 2017, at Satara City Police Station, for the offences punishable under sections 363, 366, 376 of Indian Penal Code, 1860 ('the Penal Code') and section 3, 4 and 17 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The petition arises in the backdrop of the following facts :-

(a) Umesh Pawar-the respondent No.2 (hereinafter referred to as 'the first informant') has lodged a report on 18th July 2017, initially, against an unknown person with the allegation that his niece (hereinafter referred to as 'the victim'), who was then 17 years and 11 months of age, was kidnapped from lawful guardianship. It was, *inter-alia*, alleged therein that the date of birth of the victim was '8th August 1999'. The victim was pursuing education in Yashvantrao Chavan Institute of Science, Satara. On 17th July 2017, the victim had left the home on the

pretext of attending the college. However, she did not return home. After search, it was realized that the victim was kidnapped.

(b) Later on, it was transpired that one Anand Pawar-accused No.1 was also missing from the village Aarafal since 17th July 2017. Supplementary statement of the first informant was thus recorded. The victim was traced on 18th August 2017. The victim informed that she had love affair with accused No.1-Anand Pawar since one year. The accused No.1 enticed her away on promise of performing marriage.

(c) The said accused No.1 is the cousin of the petitioner, who, allegedly, advised accused No.1 to elope and also assisted in solemnizing the marriage of the victim with accused No.1 in a temple at Narsobachi Wadi, Kolhapur. The accused No.1, thereafter, took the victim to various places and also had physical relations with her. On the basis of the aforesaid

statement, the petitioner came to be implicated as an accused and the offences punishable under sections 366, 376 of the Penal Code and sections 3, 4, 17 of the POCSO Act were also added.

3. In the backdrop of the aforesaid allegations, the petitioner has approached this Court with the assertion that he has been roped in, in the crime, malafide for the sole reason that accused No.1 is the cousin of the petitioner. The implication of the petitioner is stated to be for the purpose of wrecking vengeance as the petitioner holds a responsible position in the Revenue Department. The petitioner had no role in the alleged enticing away of the victim by accused No.1. Apparently, the victim and accused No.1 were in a relationship and they have solemnized marriage on their own volition. Even the victim had completed the age of majority on the day, the victim allegedly eloped with accused No.1. By securing a document, subsequent to the registration of the first information report, to indicate that the victim was born on '8th August 1999' instead of '8th June 1999' which the admitted documents reveal, the petitioner is being forced to face an unwarranted prosecution. Thus, the petitioner avers that the instant

prosecution is an abuse of the process of the Court.

4. We have heard Shri Madhukar Pandurang Dalvi, the learned counsel for the petitioner, Mrs.Sangita Shinde, the learned APP for the respondent No.1-State and Shri V.R. Gaikwad, the learned counsel for the respondent No.2-the first informant.

5. Before we note the submissions of the learned counsels for the parties, it would be apposite to note that a Division Bench, in view of the circumstances brought on record, had interviewed the victim on 8th February 2018.As recorded in the order dated 8th February 2018, during the course of interaction, the victim had informed the Court that her date of birth is 8th June 1999, which has been duly recorded in various documents, like School Leaving Certificate, Aadhar Card. She was not aware as to how her date of birth was recorded as ‘8th August 1999’in the date of birth register of the Municipal Council, Islampur. The victim further informed that she had married accused No.1-Anand Pawar in July 2017 and she would like to reside with accused No.1 and she feared for her life if she continued to reside with her parents as she was facing a lot of peer pressure.

6. By a subsequent order dated 15th February 2018, after hearing Shri Mihir Desai, the learned Senior Advocate as Amicus, this Court had recorded a *prima-facie* view that, in the face of the documents on record, except the birth certificate, which reveal that the victim had completed 18 years of age on the date of the alleged commission of the offence, there was every chance that the victim was not a minor at the time of the commission of the alleged offence. This Court has specifically noted that the birth certificate, on which strong reliance was placed by the prosecution, was issued on 24th July 2017, immediately after the first information report was registered on 18th July 2017 and, thus, the proximity between the registration of the first information report and obtaining the birth certificate was too close for comfort. The Court, thus, issued Rule and directed that though the investigation may go on, but charge-sheet shall not be filed against the petitioner, pending hearing and final disposal of the writ petition.

7. In the light of the aforesaid orders and the material on record, it was strenuously urged on behalf of the petitioner that the instant prosecution is actuated by a desire to wreck vengeance and exert

pressure upon the petitioner and accused No.1. Taking us through various the documents, namely, the School Leaving Certificate, Junior College Leaving Certificate, passing certificate and the certificate of age, nationality and domicile of the victim, which uniformly record the date of birth of the victim as '8th June 1999', it was submitted by the learned counsel for the petitioner that the very substratum of the prosecution that the victim was a minor on the date of the commission of the alleged offence gets dismantled. In the circumstances, implicit reliance cannot be placed upon the birth certificate, which records the date of birth of the victim as '8th August 1999'. The learned counsel for the respondent No.2 and the learned APP in contrast, banked upon the birth certificate to drive home the point that the victim was still a minor when she was kidnapped by accused No.1.

8. Evidently, from the own showing of the first informant, the victim had completed 17 years and 11 months on the date of commission of the alleged offence. The documents on record, on the other hand, indicate that over a period of time, consistently, the victim's date of birth was shown in public records as '8th June 1999'.

The matter is, thus, in the corridor of uncertainty by a period of one month. Since the birth certificate was obtained from the Municipal Council, Islampur subsequent to the lodging of the first information report, the grievance of the petitioner, in the face of the documents, which unequivocally show that the date of birth is '8th June 1999', cannot be said to unfounded.

9. So far as the instant petition is concerned, in our view, the aforesaid controversy does not warrant a definitive finding. The crux of the allegation against the petitioner is that he was an accessory before the act. The gravamen of indictment is that, at best, he had advised accused No.1 to elope and, at worst, facilitated the alleged solemnization of marriage at Narsobachi Wadi, Kolhapur. Indisputably, the victim was in a relationship with accused No.1. Not only in her statement before the investigating officer but also during the course of interaction with the Hon'ble Judges of this Court, the victim had categorically stated that she was in a relationship with accused No.1 and had thus solemnized marriage with accused No.1. She had expressed the desire to reside with accused No.1. The victim categorically asserted that her date of birth is 8th June 1999. She

disowned neither the relationship nor the factum of marriage with accused No.1. On the contrary, the victim expressed a positive desire to reside with accused No.1.

10. In the aforesaid view of the matter, we are of the considered opinion that the petitioner herein cannot be made to suffer the agony of prosecution on the basis of omnibus allegation that the petitioner had advised accused No.1 to elope with the victim and rendered assistance in solemnizing the marriage in a temple. The continuation of the prosecution would, thus, be an abuse of the process of the Court and would perpetuate injustice as well.

11. Resultantly, we are inclined to allow the petition.

12. The petition, thus, stands allowed in terms of prayer clause (a) qua the petitioner alone.

Rule is made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

[RANJIT MORE]