

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.79 OF 2021

1. Deepak Balaji Kudalkar
Age-25 years, Occu. Labour,
R/o. Anand Nagar, Nanded,
Dist. Nanded.
 2. Pooja Deepak Kudalkar
Age-22 years, Occu. Household,
R/o. Anand Nagar, Nanded,
Dist. Nanded.
- ...Applicants

Versus

The State of Maharashtra
Through Police Station Itwara, Nanded,
Dist. Nanded.

...Respondent

...

Mr. S.J. Salunke, Advocate for the applicants.
Mr. A.M. Phule, APP for the respondent-State.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 09th FEBRUARY, 2021**

ORDER:-

. The applicants have been arrested on 29.06.2020 and 08.07.2020 in connection with Crime No.58 of 2020 registered with Itwara Police Station, District Nanded, for the offences punishable under Sections 363, 366, 363A, 366A, 370, 376(2),(N)(3), read with Section 34 of the Indian Penal Code and under Section 4 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and under Sections 9, 10, 11 of Prohibition of Child Marriage Act, 2006. Present applicants are claiming bail under Section 439 of the Code of Criminal

Procedure.

2. Heard learned Advocate Mr. S.J. Salunke for the applicants and the learned APP Mr. A.M. Phule for the respondent-State.

3. It has been vehemently submitted on behalf of the applicants after taking this Court through the contents of the FIR and the charge sheet that, as the charge sheet is filed and investigation is over, further physical custody of the applicants is not required for the purpose of investigation. It has been further submitted that the applicants are innocent persons and no such offence has taken place as contended by the informant, who is the mother of victim. The entire charge sheet does not show that the victim was forcefully taken by the applicants and the victim is mentally ill. The statement of the victim has been recorded. It shows that she is capable of understanding the acts done by her and done with her. Applicant no.2 is having sucking child and the child is along with her in jail and therefore, she deserves to be released on bail. Further, the statement of the victim would show that after she was allegedly taken on the next day by applicant no.2, at that time applicant no.1 was not with them, but then she says that she was taken by applicant no.2 and her husband to Aurangabad. She states that her marriage was performed with a boy forcibly, but when she had ample opportunity to run away if such thing is happening with her and still she has not

made any such attempts to escape, it appears that no such incident has taken place. The statements of the informant and the victim under Section 164 of the Code of Criminal Procedure gives different version. The victim has made her story and made allegations about the ill-treatment by the husband and his mother. Further, one of the co-accused namely accused no.3, Ramdas Machindra Chavan has been released on bail by the learned Additional Sessions Judge on 10.08.2020 and therefore, on the ground of parity, the present applicants deserve to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the present applicants have committed heinous crime and they do not deserve any kind of sympathy. The informant certainly had no idea as to who has taken away her minor child and therefore, had lodged the report against unknown persons. After the girl was traced, the entire story could be revealed. It is not necessary that the word 'मनोरुग्ण' should mean mentally retarded. It only depicts that she has some mental problem, but then she was able to understand the things. No doubt in her statement, name of the applicant no.1 is mentioned as Deepak Kamble, but the victim is certain that he is the same person. For the defects those have been left by the Investigating Officer; accused cannot get any advantage but it is to be noted that taking

away of the girl was very much pre-planned by the present applicant no.1. She has specifically stated that applicant no.1 had committed rape on her under the railway bridge and thereafter, he had taken her to his house. Applicant no.2 insisted that victim should stay with them and thereafter on the same night, she was taken by applicant no.2 and her husband to Aurangabad. Though applicant no.1 was not with them, yet, applicant no.2 had contacted him and made victim to speak with applicant no.1. Applicant no.1 told her that after she is taken to Verul, she should perform marriage with the boy there, as the boy is having property and that property would be taken by him through victim. Her marriage was forcibly performed with accused no.2 Sharad in presence of parents of Sharad and others. Thereafter, statement has been made that the mother and accused no.2 Sharad had harassed the victim. The victim is admittedly a minor and the further facts on record would show, that literally the victim was sold by applicant nos. 1 and 2 to the other accused specially accused no.2 Sharad, with whom her marriage was performed. The medical report is supporting, so also there are photographs of marriage. When there is strong evidence against the applicants, they do not deserve any sympathy.

5. At the outset, after going through the charge sheet, it appears that the investigation is not carried out properly. There are many defects specially while giving the name of

applicant no.2. First impression that one can get is, that they are husband and wife, but from the statement of the victim it appears that applicant no.2 was introduced to victim as the sister of applicant no.1. If she is the sister, then her name cannot be Pooja Deepak Kudalkar, when the name of father of applicant no.1 is Balaji. If we see the arrest panchnama of applicant no.2, it states that the name of her husband is Deepak Kudalkar, that was the impression that was given by her to the police. Under such circumstance, the Investigating Officer ought to have cross checked the fact with the victim. Further, though there appears to be internal directions in the police department to get the identification of the accused at the time of arrest, no documents have been collected by the Investigating Officer. The arrest panchnama states that the mandatory information about her arrest was given to her father-in-law, Balaji Ganpati Kuldalkar, that means father of applicant no.1. The statements of the victim as well as informant taken under Section 164 of the Code of Criminal Procedure, describe applicant no.1 or the person who had taken the victim along with him, has been addressed as Deepak Kamble, then the question arises whether Deepak Kamble and the present applicant no.1 are the same persons. But then it appears from the other documents that, he is the same person specially from the memorandum and discovery under Section 27 of the Indian Evidence Act. At this stage,

there appears to be connecting evidence.

6. The statement of the victim clearly says at this stage, that even as against applicant no.1 there are allegations that he had committed rape on her, further as regards applicant no.2 is concerned, she had taken her to the place where she was given in marriage. There are photographs of marriage those have been collected and the main important aspect is, that the victim is aged 16 years, therefore, when heinous crime has been committed, the applicants do not deserve any sympathy. Further important point to be noted is, that intentionally the applicants have not disclosed their relationship *inter se* in their application. The role attributed to the accused who has been released on bail by the learned Additional Sessions Judge, is different and therefore, the ground of parity is not available to the present applicants. Therefore, the application deserves to be dismissed and is accordingly dismissed.

7. Taking into consideration the glaring defects in the investigation, learned APP is directed to bring the said fact to the notice of Superintendent of Police, Nanded, for any further action, so also the learned Special Judge before whom the charge sheet is filed to scrutinize the charge sheet before taking cognizance of the offence, if it is not taken upto now.

8. Registrar (Judicial) to complete the further course of action of transmitting the copies of this order to the concerned officials.

(SMT. VIBHA KANKANWADI, J.)