

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.214 OF 2021

Arif Raheman Khatik,
Age 27 years, Occupation Labour,
R/o Dahiwad Tq. Amalner
District Jalgaon.

**...Applicant
(Orig.Accused No.5)**

VERSUS

The State of Maharashtra
Through Police Station, Amalner
Taluka Amalner District Jalgaon.

...Respondent

.....
Advocate for Applicant : Mr. H. F. Pawar
APP for Respondent-State : Mr. A. M. Phule.
.....

**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 15-03-2021.**

ORDER :

1. Present applicant has been arrested in connection with Crime No.505 of 2020, registered with Amalner Police Station, Amalner District Jalgaon, for the offences punishable under Section 9, 10 and 11 of Prohibition of Child Marriage Act and under Section 5 (j) (ii), 5 (I), 6 of The Protection of Children from Sexual Offences (POCSO) Act. He has filed present application under Section 439 of Code of Criminal Procedure.

2. Before considering the application, a hard reality is required to be placed. Though there is prohibition of child marriages, yet in the rural areas we still experience such child marriages. The girl child is still in this century also seen as a responsibility by the parents and they would be interested in giving the daughter in marriage as early as possible. This is one of such case.

3. The First Information Report has been lodged by Rahul Ajinath Labde who is serving as Police Sub-Inspector with Amalner Police Station. He was investigating Crime No.476 of 2020, registered with his police station for the offences punishable under Section 376(h), 354-A, 452, 506 of Indian Penal Code and Section 4, 8, 12 of The Protection of Children from Sexual Offences (POCSO) Act. That First Information Report came to be lodged on the basis of information lodged by the victim / prosecutrix on 20-07-2020. In fact, Police Inspector Ambadas More is investigating that matter and the present informant is assisting him. When at the time of collecting evidence in that matter, they came across the birth certificate of the victim which was taken from Surat Municipal Corporation, at that time it was revealed that her birth date is 04-12-2003. That means, at the time when offence was committed, in that case she was 16 years 07

months old. However in her First Information Report itself she had stated that she got married with present applicant in December 2019 and she was pregnant of five to six months from the present applicant. It has been then contended in the First Information Report that in spite of having knowledge about the fact that the victim is minor, yet the marriage has been performed and then she is pregnant from the present applicant. The offence has been registered on behalf of State.

4. Heard learned Advocate Mr. H. F. Pawar for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

5. It has been submitted on behalf of the applicant that the applicant is a labour and a illiterate man. In fact, as per the Indian Majority (Amendment) Act 1999 is read in correct perspective then the marriage of the present applicant which is as per the Muslim Law, cannot be considered as marriage with a child. In fact, as per the Muslim Personal Law, after the girl attains puberty she is ready for contracting a marriage. The victim who has married to the present applicant has not made any kind of complaint. She had made complaint against a third person about ravishing her and,

therefore, the present applicant deserves to be released on bail.

6. Per contra, the learned Additional Public Prosecutor strongly opposed the applicant and submitted that a person cannot disobey the provisions of law under ignorance. All the citizens of the country should know the law as ignorance of law is no excuse. When specifically the legislature has passed the Act of The Child Marriage Restrains Act, at that time definitely even the Muslim Personnel Law was considered. The Act is prevailing since 2006 and it prohibits an adult male above 18 years of age to contract a child marriage. Further the victim has become pregnant from the present applicant and it presupposes that there was sexual intercourse between them, and the consent of the minor cannot said to be a consent in law. The offence about sexual assault as per The Protection of Children from Sexual Offences (POCSO) Act would be attracted. Therefore, there is strong evidence against the present applicant, he does not deserve any sympathy.

7. At the outset, it is to be noted that the victim has not made any grievance against the present applicant. She had filed First Information Report against another person, and during the investigation of that offence, the present informant has found out

some such facts which have given rise to present First Information Report. As per the prosecution, at the time of marriage in December 2019 the victim was around 16 years of age. When she lodged the report on 20-07-2020, she was aged 16 years 07 months and she was pregnant of five to six months. At the stage of bail this Court need not deliberate as to whether the offence under the Prohibition of Child Marriage Act 2006 has been made out against the present applicant or not taking into consideration the Indian Majority (Amendment) Act, 1999 and Muslim Personal Law. That will have to be considered by the learned Trial Judge. However, Section 9, 10 and 11 under which the First Information Report has been lodged prescribes for rigorous imprisonment which may extent to two years. Section 15 of the Prohibition of Child Marriage Act, 2006 prescribes, *"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable made under this Act shall be cognizable and non-bailable."* However, taking into consideration the punishment prescribed and the fact that now the further physical custody of the applicant is no longer required, he deserves to be released on bail. Further as regards the provisions under The Protection of Children from Sexual Offences (POCSO) Act are concerned, under this special circumstance i.e. the present

applicant had performed marriage with the victim, he need not be kept behind bar. So also fact that as per the submission of the applicant as well as learned Additional Public Prosecutor that the victim has delivered a child, the applicant has to take care of his child. Since this is a peculiar case, the discretion will have to be used in favour of the applicant, and therefore, he deserves to be released on bail. Hence, following order.

ORDER

- 1) Applicant Arif Raheman Khatik, arrested in connection with Crime No.505 of 2020, registered with Amalner Police Station District Jalgaon, for the offences punishable under Section 9, 10 and 11 of Prohibition of Child Marriage Act and under Section 5 (j) (ii), 5 (l), 6 of The Protection of Children from Sexual Offences (POCSO) Act, he be released on P.R. of Rs.30,000/- (thirty thousand) with two solvent sureties of Rs.15,000/- each (fifteen thousand).
- 2) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 3) Bail before Trial Court.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-