

2 It is the case of prosecution that the victim and the applicant are neighbours. The applicant had expressed his love for victim many times whenever the victim used to pass through the road. According to prosecution, on 13/04/2019 the applicant took victim to a temple and said that he cannot live without her and then tied a mangalsutra around her neck. The victim could not say, 'no'. When this fact came to be knowledge of the family members of victim, on 21/04/2019 in the presence of select family members of the victim and the applicant a marriage ceremony was carried out as per Hindu rites. The victim then started living as a wife of applicant at her conjugal home. The prosecution alleges that after 2-3 months the applicant, his family members started harassing the victim, send the victim to her parental home by saying that they do not want to keep victim in their house. The victim accordingly lodged the report.

3 Ms. Punde, learned Counsel for the applicant, submits that no case is made out against the applicant under relevant provisions of Indian Penal Code, Protection of Children from Sexual Offences Act, 2012 and Prohibition of Child Marriage Act, 2007 ("POCSO Act" for short) According to learned Counsel, the marriage ceremony was performed in the very presence of family members of the victim and as also family

members of the applicant and in view of the ratio laid down in the case of **S. Varadarajan V/s. State of Madras**,¹. It can not be said that the victim was taken out of lawful guardianship of the parents of victim. Moreover, there are no criminal antecedents and the investigation is completed leading to the filing of the charge-sheet and therefore, application deserves to be allowed, urged learned Counsel.

4 Mr. Palkar, learned APP, on the other hand, opposed the submissions by inviting my attention to the statement of victim recorded under Section 164 of Criminal Procedure Code. He further submitted that her statement is in consonance with the FIR, there is medical certificate and the fact remains that the victim was minor on the date of solemnization of marriage. In such circumstances, having regard to the seriousness of offence, the application does not merit attention.

5 Ms. Kuttikrishnan, learned Counsel for respondent no.2, also opposed the submission of the learned Counsel for applicant by contending that the victim was not only minor but was forced to marry with the applicant and later on came to be abandoned. There being no merit in the application, the same be rejected, argued learned Counsel.

¹ AIR 1965 SUPREME COURT 942

6 Perused the FIR and investigation papers. If the FIR is read carefully then it appears that on the date of lodging of FIR i.e. on 10/08/2019, the victim was 15 years old. Although, it is alleged that on 13/04/2019 she was taken to the temple where the applicant allegedly tied a mangalsutra around her neck but the victim could not say 'no'. The subsequent development on 20/04/2019 and 21/04/2019 are of great significance. On 20/04/2019, as per the contents of FIR, the father of victim tried to persuade the people from the side of applicant that his daughter is still young and is of 16 years old but he was persuaded to marry his daughter to applicant. Accordingly, on 21/04/2019 in the select gathering of the family member of victim including her parents and the family members of applicant, the marriage was performed as per Hindu rites.

7 It seems that the differences started after 2-3 months of the said marriage when the applicant and his family members started subjecting victim to harassment and ultimately they refused to keep the victim in their house. It is only then present FIR came to be filed.

8 In the case of **S.Varadrajan V/s State of Madras (Supra)**, the Hon'ble Apex Court has held thus:

“There is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though it can not be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S.361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person, the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

9 If the chronology of events in the case in hand is scrutinized carefully and cautiously, it would firstly be seen as per the contents of FIR and as told by the father of victim that the victim was 16 years old, she went on her own along with applicant to a temple, allowed him to tie mangalsutra around neck on 19/04/2019. The parents of the victim were persuaded to the marriage ceremony to which they agreed and therefore, ultimately on 21/04/2019 the marriage ceremony of victim and the applicant was performed in the very presence of family members of the respective family including the parents of the victim. This events necessarily do not even remotely suggest that the victim was compelled to leave her parents house. It is also not a case of prosecution that the victim was given a false promise of marriage. Rather the marriage ceremony was performed with full consent of the parents of the victim. In such circumstances, I do not think that the applicant can be said to have taken victim away from the keeping of her lawful guardian.

10 So far as the offence punishable under the provisions of POCSO Act is concerned, one can't have a reservation about the nature of provisions i.e. provisions are quite stringent. However, in the given set of facts and circumstances, these provisions can not fetter any restrictions on the discretionary power of the Court and to deter the Court from

enlarging the accused from bail, if otherwise the accused is entitled to be admitted on bail.

11 As already noted, the marriage was not only performed with the consent of the parents of the applicant and that of victim but she also resided with applicant for about 2-3 months in her conjugal home. It may be that she was 16 years old at the time of incident but the consent of parents and as also the conduct of victim goes to show that not only the victim but her parents had sufficient knowledge of the understanding as to full import of what the victim would be doing and that is why only thereafter they of their own will allowed the marriage ceremony to be performed.

12 I am, therefore, satisfied. Having regard to the peculiar facts and circumstances of the case, that the applicant deserves to be admitted on bail. Accordingly, I am inclined to allow the application. Hence, the following order.

ORDER

(i) Applicant- Akshay Rohidas Khirid shall be released on bail in C.R. No. 205 of 2019 registered with Haveli Police Station, Pune Gramin, District-Pune on his executing P .R. bond in the sum of Rs.25,000/- with

one or more sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(iv) The application is allowed in the aforesaid terms.

REKHA
PRAKASH
PATIL

(V. G. BISHT, J.)

Digitally signed
by REKHA
PRAKASH PATIL
Date: 2021.11.15
16:12:13 +0530