

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 657/2021

(Mohammad Talha Kashif S/o Mohd. Shafiullah Vs. State of Maharashtra)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R. V. Khaparde, Advocate for applicant.
Shri I. J. Damle, APP for State/non-applicant No.1.
Ms. Sneha S. Dhote, (appointed), Advocate for non-
applicant No. 2.

CORAM : VINAY JOSHI, J.

DATE : 20.09. 2021.

Heard.

2. This is an application for grant of regular bail in terms of Section 439 of the Code of Criminal Procedure. The applicant was arrested in Crime No. 56/2021 registered with the Police Station Rahimapur, Taluka Daryapur, District Amravati for the offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO). While claiming bail, the applicant denied the

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prosecution case and submitted that he has already married with victim girl and ready to cohabit. Moreover, it is submitted that the applicant has already faced custodial interrogation and since last six months, he is in Jail. Having regard to these peculiar facts, the applicant prayed for grant of bail.

3. The State resisted bail by contending that the offence is of serious in nature which may attract punishment upto life imprisonment. The informant – lady also resisted bail by filing reply-affidavit. She contended that the applicant under promise of marriage had committed repetitive sexual intercourse with her. Though latter they got married, however after few months from marriage, the applicant left victim at her maternal house and without informing anybody, went away with no intention to return. Having regard to the seriousness of the offence, bail is prayed to be rejected.

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4. The case is having peculiar facts of its own. Informant girl aged 18 years, lodged report on 20.03.2021. It is her case that while she was studying in 11th Standard, she got acquainted with the applicant. Their casual acquaintance turned into love relationship. Victim stated that on 04.01.2020, the applicant took her in the field and had physical relations. Thereafter, the accused repeatedly had sexual relations by giving her promise to marry.

5. The victim girl stated that she conceived pregnancy in the month of October 2020 and then, both of them went to victim's uncle's house at Chandrapur. On 19.11.2020, the victim's uncle got performed marriage of both in customary mode. Though the applicant was aware that on the date of marriage, victim girl had not completed the age of 18 years, still marriage was performed. After marriage, for the period of four months, both of them stayed at rented house in Chandrapur as husband and wife. Then on

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17.03.2021, the applicant brought victim to her maternal house and without informing anybody, left the place. The victim tried to contact the applicant, however, he refused to take her back therefore, the report.

6. Admittedly, the date of birth of victim was 02.01.2003, whilst marriage was performed on 19.11.2020, meaning thereby when the victim was 17 years of age. The learned counsel for the applicant would submit that the applicant never gave false promise to marry, on the other hand, he got married with her. He would submit that the marriage in between couple is voidable in view of Section 3 of the Prohibition of Child Marriage Act, 2006 since the victim had not opted by approaching the Court for annulment of marriage, hence the relationship is in subsistence. Moreover, he would submit that the applicant is still ready and willing to accept and reside with victim as husband and wife. He would submit that only because the applicant went to meet his parents

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therefore, the victim who is his legally wedded wife has filed report out of vengeance.

7. As per the prosecution case, the applicant first time had sexual relations on 04.01.2020 and then it was continued till they got married on 19.11.2020 and thereafter also. It means that on the date of first sexual relation, there was no matrimonial relationship and the victim was minor. True, the subsequent marriage has no impact on the earlier occurrence. However, it is to be noted that it was purely a love affair in between young couple. It can not be said that the applicant gave false promise to marry because in quick succession, he got married with victim girl. It requires to be noted that it is not the victim's case that the applicant maintained sexual relations by using force. As per victim's own case, both of them went to the house of victim's uncle where they got married. Therefore, it requires to be proved during trial whether the act of both of them at their own visiting to the house of victim's uncle

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amounts to the offence of taking away from lawful guardianship.

8. At the relevant time, the victim girl was 17 years of age. The victim's own relative i.e. her uncle has performed their marriage. Moreover, both of them stayed for four months at Chandrapur as husband and wife. It is not the victim's case that the applicant has threatened or compelled her to stay with him at rented house. These facts bears significance.

9. The applicant was arrested on 22.03.2021 and had faced custodial interrogation. Already investigation is complete and charge-sheet has been filed. Certainly, trial will take considerable time for disposal according to the law. In peculiar facts of this case, further detention of applicant is no more required. In view of that, applicant can be released on bail by putting him on certain terms and condition, hence

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following order:-

(I) Application stands allowed and disposed of.

(II) Applicant – Mohammad Talha Kashif S/o Mohd. Shafiullah is released on bail on his furnishing P. R. Bond in the sum of Rs. 25,000/- with one surety in the like amount.

(III) The applicant shall not enter into limits of Village Wadalgavhan (residential place of victim) till conclusion of trial.

(IV) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Gohane.