

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

CRIMINAL WRIT PETITION NO.507 OF 2021

Sagar S/o. Sanjay Bodade,
Age. 25 years, Occu. Labour,
R/o. Indira Nagar, Hiwarkhed,
Tq. Telhara, Dist. Akola.

....PETITIONER

---- VERSUS ----

1. The State of Maharashtra,
Through Police Station Officer,
Hiwarkhed Police Station,
Hiwarkhed.
2. The Superintendent of Police,
Police Superintendent Office,
Akola.
3. The Collector, Akola,
Tq. Telhara, Dist. Akola.
4. The Women and Child Welfare Office,
Tq. Telhara, Dist. Akola.
5. Sanjay S/o. Gopalrao Ingle,
Age 54 years, Occu. Labour.
6. Smt. Kalpna Ganesh Ingle,
Age 40 years, Occu. Labour.
7. Vicky S/o. Ganesh Ingle,
Age. 19 years, Occu. Labour.
8. Sagar S/o. Sadashiv Dhande,
Age. 30 years, Occu. Labour,
All R/o. Indira Nagar, Hiwarkhed,
Tq. Telhara, Dist. Akola.
9. Devanand Bhojane,
Age. 54 years, Occu. Labour,
R/o. Wadi Isapur, Tq. Telhara,
Dist. Akola.

10. Vicky Morode,
Age Major, Occu. Labour,
R/o. Khandala,
Tq. Telhara, Dist. Akola.

.... RESPONDENTS.

Shri S. M. Awachar, Advocate for the Petitioner.
Shri V. A. Thakare, A.P P for the Respondents/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 17.09.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard Shri S. M. Awachar, learned Advocate for the Petitioner and Shri V. A. Thakare, learned Additional Public Prosecutor for the Respondents/State.

2. Rule. Rule is made returnable forthwith.

3. By the present petition under Article 226 and 227 of the Constitution of India, the petitioner is seeking direction against the respondent Nos.1 and 2 to arrest respondent Nos. 5 to 10 and the parents of respondent No.10 for the offence under the provision of the Prohibition of Child Marriage Act, 2006 and in pursuance of the complaints dated 24.03.2021 and 31.03.2021.

4. It is alleged in the petition that the respondent Nos. 5 to 10 have committed offence under Section 10 of the Prohibition of Child Marriage Act, 2006 and the petitioner has therefore filed

complaint dated 24.03.2021 with Hiwarkhed Police Station and thereafter, the petitioner has also filed complaint with the respondent No.3 – Collector, Akola on 31.03.2021. It is stated in paragraph No. 6 of the petition that offence bearing Crime No. 114/2020 under Section 363 of the Indian Penal Code, Sections 376, 376(2)(i)(n) of the Indian Penal Code and under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 has been registered against the petitioner. It is also stated that the learned Sessions Judge, Akot has granted regular bail to the petitioner on 15.07.2020. It is stated that after the petitioner was released on bail, the victim in relation to which the offence came to be registered against the petitioner, had married with the respondent No.10, which is the violation of provision of the Prohibition of Child Marriage Act, 2006.

5. During the course of hearing, the learned Advocate for the petitioner has submitted that the trial against the petitioner in relation to Crime No.114/2020 has already been started. The learned Advocate for the petitioner has tendered the copy of final report under Section 173 of the Code of Criminal Procedure for our perusal. After going through the contents of the charge-sheet, it appears that the trial against the petitioner under Sections 363, 376, 376(2)(i)(n) and Sections 3, 4, 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 has been commenced.

6. In the light of aforesaid facts, it appears that the petitioner has filed application with the respondent Nos.1 and 2, which are actuated by malice and it cannot be said to be a legitimate prosecution. The jurisdiction of this Court being extraordinary jurisdiction, the power cannot be exercised at the instance of a person, who has initiated the proceedings with malafide intention to harass respondent Nos. 5 to 10. Whether the respondent Nos. 5 to 10 have committed offence under the provision of the Prohibition of Child Marriage Act, 2006 or not, it is for the investigating agency to decide.

7. Since the present petition is actuated by malice, we refuse to grant relief to the petitioner, as we are satisfied that the prosecution sought to be initiated by the petitioner is not a legitimate prosecution.

8. There is no merit in the petition, the petition is, therefore, dismissed.

9. Rule is discharged. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE