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

BAIL APPLICATION NO.1385 OF 2022

Sandip S/o. Dilip Mali
Age 32 years, Occu. Labourer,
R/o. Guru Colony, Nandurbar,
District Nandurbar .. Applicant

Versus

1. The State of Maharashtra
Through MIDC Waluj Police Station,
District Aurangabad
2. XYZ .. Respondents

Mr. S. D. Chaudhari, Advocate holding for Mr. D. D. Chaudhari,
Advocate for applicant;
Mr. K. S. Patil, A.P.P. for respondent No.1/State;
Mr. S. N. Dudhate and Mrs. S. S. Puri, Advocate for respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 12th October, 2022

PC.

1. Heard the learned counsel for the applicant, learned A.P.P. for respondent No.1/State and learned counsel for applicant No.2.
2. The applicant has been arraigned as an accused in C.R.No.897 of 2021 registered with MIDC Police Station, District Aurangabad, for

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the offences punishable under Sections 306, 376(2)(j)(n), 201, 370, 372, 373, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006.

3. At the time of lodging the report, the victim turned major. It has been alleged that in the month of July 2018, the victim requested her father and uncle to admit her in 9th standard. At that time, her step-mother said her that she should not go to school, she has to get married. She was opposing for marriage. Therefore, they were beating her. First time in the year 2018, she was sold to one woman resident of Rajkot, State of Gujarat, for Rs.2 Lakh. One aged person, posing himself to be a lawyer, was residing with that woman. She was there for one month. Two unknown persons committed rape with her. Then the said lady called her father and sent her back to Aurangabad. She was treated medically at Aurangabad. Her father and step-mother were continuously harassing her. They took her to the house of the present applicant and left her alone. The applicant told her that he purchased her for Rs.4 Lakh. She stayed with him for two months. He did repeated sex with her. Therefore, her health was deteriorated and she had conceived. As soon as the applicant learnt

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about her pregnancy, he called her father. Her father took her to Aurangabad for Diwali festival. Her father, uncle and step-mother aborted her. Then, she was married to one another boy on 20.12.2019. Under the premise of the above allegations, the crime has been registered.

4. The learned counsel for the applicant would submit that the parents of the victim arranged her marriage with him. He has placed on record the marriage pictures. The applicant never purchased the victim. It was a consensus marriage. At the time of marriage, it was told to him that the victim was major. Her parents were also present in the marriage ceremony. He believed her parents. The victim also never resisted the marriage. However, suddenly in one fine morning, she left the home and did not turn up for a long time. The applicant was inquiring with her parents why she did not return since Diwali festival. They gave evasive answers and were making the dry promises that within a short time, they would bring her to his home. The applicant was believed them. She did not conceive from him. The false allegations have been levelled against him that the victim conceived from him and he did repeated sex with her forcefully. During her stay for two months of her stay with him, she never made any allegations. The best reasons are known to her and her parents

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why they did not send her back. The applicant never denied the responsibility as her husband. He never purchased her for Rs.4 Lakh. After a passage of time, the parents and the victim denied to bring her to him. In the year 2022, he learnt that the victim married to a third person. He being financially poor, could not take action against the victim, her parents and uncle.

5. It is also argued for him that he was not aware of the report lodged against him. The date of birth relied upon by the prosecution is inconsistent with the allegations as regards her leaving the school and the place of her education. The applicant had no role to play. He treated the victim as wife under the impression that she was physically and mentally fit to marry. Nothing is to be recovered from the applicant. The supplementary charge-sheet has been filed against the applicant. He is behind the bars since last more than seven months. Since the co-accused are seeking adjournment, the trial has not been progressed. He is the permanent resident of Nandurbar. He has roots there. Hence, he would not abscond. He is now 32 years old unmarried man. He has his family responsibilities. He is ready to co-operate with the trial. Hence, he may be released on bail.

6. The learned A.P.P. has strongly opposed the application. He would submit that at the relevant time victim was below 16 years.

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Therefore, her consensus is immaterial. Since the day of the registration of the crime, the applicant was absconding. He has put-forth a false story of consensual marriage. The offence is apparently serious. He cannot be believed that he may attend the trial. He can flee away from justice. Therefore, he may not be granted bail.

7. The learned counsel for the victim has vehemently argued that the parents, uncle and step-mother of the victim are also the accused. They are the main culprits and spoiled the life of the child of fifteen years old. She was firstly sold in the State of Gujarat, then she was forced to marry with the present applicant and again she was forcefully married to a third person. She had suffered continuous physical and mental atrocities. Now she is residing with her biological mother. The applicant may tamper with the prosecution witnesses. The offence is serious. Hence, the bail may not be granted to the applicant.

8. The first information report, as discussed above, reveals that firstly, the victim was sold in State of Gujarat and then she was married to the applicant. Till lodging the report, there was no objection about her age, but her life turned when she was lastly sold to the co-accused Vitthal Narayan Gaikwad and married to him in 2019. She stayed with him for around 8 to 9 months and, lastly, on

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14.10.2020, said Vitthal Narayan Gaikwad took her to the police station where her relatives were present. The police asked her where she wanted to go to reside. One N.C. was registered against said Vitthal Gaikwad. Her maternal uncle and father were threatening her and forcing her not to lodge the report; due to which, in January 2021, she left for Mumbai along with her mother and, thereafter, she lodged the report. She did not deny the marriage with the applicant.

9. The victim is consistent with her allegations in her statement under Section 164 of the Code of Criminal Procedure, however, she has stated in her said statement that the applicant went to her home with her mother and maternal uncle to see her for marriage and she consented to marry him. So, she admitted that she performed the marriage with the applicant. She stayed with him for two months.

10. The prosecution has no evidence that she was conceived from the present applicant. Her father took her for Diwali festival from the house of the applicant. It seems that the victim married to another person when her marriage was subsisting with the applicant. Whether their marriage was valid or invalid, is a question of fact. *Prima facie*, it appears that she married with the present applicant. The prosecution has no evidence that the applicant purchased her for Rs.4 Lakh. Whether the applicant has capacity to pay such huge

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amount, is also a question of fact, to be assessed during the course of the trial. The charge-sheet has been filed. The co-accused have also been released on bail. They have played similar role in initiating the crime. The victim has no complaint that since she left the house of the applicant, he ever harassed and troubled her. The conduct of the prosecutrix reveals that she was married with the boys one after another. It may be possible that she was married forcefully under the threat of her parents. Be that as it may, *prima facie* the case appears serious, but the history of marriage and no complaints till lodging the report may be considered for granting bail. The applicant has roots at Nandurbar. So, he may be believed that he may not flee from the justice and attend the case on each and every date. The applicant did not marry after the marriage with the victim. He is a poor labourer and has a family responsibility.

11. Considering the facts of the case and the progress of the trial, the Court is of the view that the detention of the applicant in jail would serve no purpose. Hence, the following order :-

- i) The application is allowed.
- ii) Applicant Sandip s/o. Dilip Mali be released on bail, on furnishing PB and SB of Rs.15,000/-, with one solvent surety of the

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like amount, in C.R.No. 897 of 2021 registered with MIDC Police Station, District Aurangabad, for the offences punishable under Sections 306, 376(2)(j)(n), 201, 370, 372, 373, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006, on the conditions (i) to attend the trial on each and every date, subject to certain exception, and (ii) he shall not tamper with the prosecution witnesses.

(S. G. MEHARE, J.)

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