

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

**ANTICIPATORY BAIL APPLICATION NO.1520 OF 2021
WITH
CRIMINAL APPLICATION NO.138 OF 2022**

Kishor S/o Suresh Patil

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Gulab S/o Govinda Patil

...RESPONDENTS

...
Mr.S.B. Surse Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent No.1-State.
Mr.Dipesh D. Pande Advocate for Respondent No. 2 as well
as for assist to APP.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 24th JANUARY, 2022

ORDER :

1. Criminal Application No.138 of 2022 moved for assist to
APP stands allowed and disposed of.

2. The applicant is apprehending his arrest in connection with
Crime No.108 of 2021 registered with Kasoda Police Station,

District-Jalgaon. It appears that initially offence has been lodged under Section 363 of the Indian Penal Code but later on Section 376 (1) of the Indian Penal Code and Sections 4, 5 (I), 6, 8 of the Protection of Children from Sexual Offences Act and Section 9 of Child Marriage Restraint Act came to be added.

3. Heard learned Advocate for the applicant and learned APP for the respondent – State well assisted by learned Advocate Mr. Pande.

4. It has been vehemently submitted on behalf of the applicant that initially offence under Section 363 of the Indian Penal Code was registered on 31st August 2021. There was a love affair between the victim and the present applicant. It can be demonstrated from the documents which have been filed by the applicant who is assisting the APP, that the present applicant as well as the victim had given complaint application to Police Station stating that they are in love with each other and they want to perform marriage, however due to resistance by the family members if at all a complaint is filed then that should be treated as cancelled. It was even stated that the victim is major. Accordingly they performed marriage on 31st July 2021 at Alandi

Devachi, Taluka-Khed, District-Pune and it was a legal marriage. Even an affidavit was sworn by the applicant and the victim on 31st July 2021, copy of which would show that the victim had given her date of birth as 24th June 2003. Even on her school leaving certificate birth date is 24th June 2003 and also it is reflected in the certificate issued in the name of victim by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune. On her Adhar Card also her year of birth is 2003. The applicant believed in the same and performed the marriage. Under such circumstance, it cannot be stated that the provisions of Protection of Children from Sexual Offences Act and Section 376 of the Indian Penal Code would be attracted. The custodial interrogation of the applicant is not necessary. He is ready to abide by the terms of the bail.

5. Per contra, the learned APP, well assisted by learned Advocate Mr. Pande, submitted that the birth certificate of the victim would prevail which has been issued by the Health Department of the Government of Maharashtra, which shows that her date of birth is 17th March 2004 and therefore on the date of offence i.e. 31st July 2021 the victim was minor. The custodial interrogation of the applicant would be then necessary

as the marriage has been performed against her wish as well as sexual intercourse has been made against her wish.

6. At the outset, it is to be noted from the documents those are produced that there is a dispute about the date of birth of the victim. The informant himself has produced certain documents on record which would show that his daughter had represented even to the police that she is major and whatever she was doing, was as per her wish to which the informant had opposed after noticing the fact that on the school leaving certificate as well as the certificate issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune after the victim had passed 10th standard examination in March 2019, her date of birth is 24th June 2003. On the said certificate the birth place is shown as Pimpri Mandale, Taluka-Parola, District-Jalgaon. On the school leaving certificate it is the same. But then how in the birth certificate issued by Health Department her date of birth is shown as 17th March 2004 is a question and specific question was then put to the learned APP assisted by the Advocate for the informant, as to who had given information about her date of birth to the school authorities when she was admitted in the school. The purpose behind asking

this question was that when the victim would have been admitted in the school when she would have been around six years of age, at that time the present applicant would not have had any role to play. Till she passed 10th Standard examination the victim and the informant allowed that date of birth to remain on record. At any earlier point of time it appears that there was no attempt on the part of the informant to get her date of birth corrected in the school record. It was told on behalf of the informant through learned APP that informant came to know about the date of birth as such on the school record after that document has been produced by the applicant. This explanation is not convincing. Definitely, passing certificate of 10th Standard also gives that date of birth. Therefore, whatever evidence produced before this Court shows that there is dispute about the date of birth of the victim. According to one date victim is major and according to another date she is minor. Therefore, that will have to be proved by the prosecution at the time of trial. When such disputed fact is there, the applicant need not be asked to languish in jail by curtailing his liberty. On the basis of fixation of date of birth of the victim it will be decided by the trial Court that which sections are made out or whether they are made out or not. Hence, under such circumstance, interim protection

granted earlier deserves to be confirmed and application deserves to be allowed with conditions. Hence the following order:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted by this Court by order dated 20th December 2021 stands confirmed. It is clarified that in the event of arrest of the applicant – Kishor S/o Suresh Patil in connection with Crime No.108 of 2021 registered with Kasoda Police Station, District-Jalgaon for the offence punishable under Sections 363, 376 (1) of the Indian Penal Code and Sections 4, 5 (I), 6, 8 of the Protection of Children from Sexual Offences Act and Section 9 of Child Marriage Restraint Act, he be released on bail on PR Bond of Rs.25,000/- with one or more sureties in the like amount.
- iii) Applicant shall attend Kasoda Police Station, District-Jalgaon on every Monday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

v) Criminal Application No.138 of 2022 stands disposed of.

[SMT. VIBHA KANKANWADI , J.]

asb/JAN22