

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

ANTICIPATORY BAIL APPLICATION NO.1608 OF 2021

- 1) Shobhabai W/o Prakash Salunkhe,
- 2) Prakash S/o Natha Salunkhe

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) X Y Z

...RESPONDENTS

...
Mr.Chetan V. Bhadane Advocate for Applicants.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1 – State.
Mr.P.P. Mandlik Advocate (appointed) for Respondent No.2.
Mr.R.M. Sharma Advocate for Respondent No.2.
...

WITH

ANTICIPATORY BAIL APPLICATION NO.1418 OF 2021

- 1) Vandana Suresh Salunkhe
- 2) Suresh Natthu Salunkhe

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) X Y Z

...RESPONDENTS

...
Mr.Manish V. Bhamre Advocate for Applicants.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1 – State.
Mr.P.P. Mandlik Advocate (appointed) for Respondent No.2.
Mr.R.M. Sharma Advocate for Respondent No.2.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 23rd MARCH 2022

DATE OF PRONOUNCING ORDER : 4th MAY 2022

ORDER :

1. The applicants in both the Applications are apprehending their arrest in connection with Crime No.92 of 2021 registered with Nijampur Police Station, Sakri, Taluka and District-Dhule for the offence punishable under Sections 376(2)(f), 376(2)(n) read with Section 34 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (for short "POCSO Act") and Sections 9, 10, 11 of Child Marriage Restraint Act, 1929.

2. Heard learned Advocate Mr. Bhadane for the applicants in Anticipatory Bail Application (for short "ABA") No.1608 of 2021 and learned Advocate Mr. Bhamre for the applicants in ABA No.1418 of 2021 and learned APP Mr. Virdhe for respondent No.1

– State in both the Applications. Since respondent No.2 did not engage Advocate immediately, learned Advocate Mr. P.P. Mandlik was appointed to represent the cause of respondent No.2, however, later on respondent No.2 has engaged Advocate Mr. R.M. Sharma, therefore submissions of both the learned Advocates are heard.

3. It has been submitted on behalf of the applicants that they have been falsely implicated. Applicants in ABA No.1418 of 2021 are the relatives of the informant, however, with some ulterior motive now the informant has made allegations against them. There is delay of about one year in lodging the First Information Report (for short "FIR") and there is absolutely no explanation for the inordinate delay. The allegations about offence under Section 376(2)(f), 376(2)(n) of the Indian Penal Code are against one Mansajan who has been already arrested and he is not the applicant in present applications. Victim is the daughter of the informant and then it is stated that said Mansajan had committed rape on her when victim was staying with her paternal aunt – Vandana who is applicant No.1 in ABA No.1418 of 2021 and thereafter when the victim became pregnant, all of them forced the victim as well as the informant that marriage of the victim should be performed with Mansajan. Applicants in ABA

No.1608 of 2021 are the parents of said Mansajan. Nothing incriminating is required to be recovered from the applicants and therefore, their physical custody will not be necessary.

4. It has been tried to be submitted on behalf of the parents of Mansajan, who are applicants in ABA No.1608 of 2021, that in fact the informant herself had forced for the marriage between Mansajan and the victim. Now, male child had begotten to the victim. The victim had attained the age of puberty and maturity. The informant herself was present when the marriage took place. Therefore, she has also committed an offence, yet, now she has dared to lodge the report. It can be seen from the facts of the case that there was love affair between the victim and Mansajan and solemnization of the marriage is an admitted fact. When the marriage has been performed, Mansajan would be the husband of the victim and it cannot be said that he has committed rape on the victim. The offence under Child Marriage Restraint Act does not require custody.

5. Learned Advocate representing the applicants in ABA No.1418 of 2021 has submitted that the informant wants to shift her responsibility on the shoulders of the applicants. No role has been played by the present applicants in forcing the victim to

perform marriage with Mansajan. The victim was residing with these applicants since the age of three years and they have taken good care of the victim like their own daughter. Therefore, custody of these applicants is also not required for the purpose of investigation.

6. Both the learned Advocates for the respective applicants submitted that the applicants are ready to abide by the terms of the bail and the learned Advocate for the applicants in ABA No.1418 of 2021 submitted that this Court had granted interim protection to those applicants on 3rd December 2021. The applicants have not misused that liberty and have abided by the terms of the bail. That interim protection deserves to be confirmed.

7. Per contra, the learned APP has strongly objected the Applications and submitted that the child marriage is a social problem and whoever instigates for it, is committing offence against society at large. Now, the DNA Report has also been received and it has been opined that the victim and said Mansajan are the biological parents of the boy born to the victim. Though that offence i.e. under Sections 376(2)(f), 376(2)(n) of the Indian Penal Code would be mainly attracted against

Mansajan, however, the fact that Mansajan had ravished the victim was within the knowledge of the applicants in ABA No.1418 of 2021 and still neither of them had reported the fact to the Police. It amounts to an offence under POCSO Act. The informant is widow and therefore, she had kept her daughter, since her age of three years, with Vandana – applicant No.1 in ABA No.1418 of 2021. Since the victim, who is admittedly minor, was under the custody of said applicant Vandana and she being the guardian, was supposed to look after the ward properly. The victim became pregnant and this could be noticed only by the mother and not by this applicant No.1 – Vandana. Thereafter the victim was asked about what had happened and she told that Mansajan had taken disadvantage. When this fact was revealed, informant states that she was proceeding towards Police Station to lodge the report, however, she was stopped by Suresh – applicant No.2 in ABA No.1418 of 2021 and it is stated that they prevailed upon the informant that marriage would be performed between the victim and Mansajan. She states that even the applicants in ABA No.1608 of 2021 had forced her. Thereafter the marriage was performed and then the victim was residing with Mansajan. Six months thereafter she gave birth to the son and 7 to 8 days after his birth, Shobhabai – applicant No.1 in

ABA No.1608 of 2021 left the victim along with son to the house of the informant. Many times messages were given by the informant that the victim should be taken for cohabitation, however, thereupon the stand of applicants in ABA No.1608 of 2021 (parents of Mansajan) changed and they started saying that the son is not begotten from Mansajan and avoided to take the victim back for cohabitation. Thus contents of the FIR would clearly show that there was design and each applicant had played his or her part in the same. When such a heinous crime has been committed, the applicants do not deserve extraordinary discretionary relief.

8. At the outset, if we consider that the informant is the mother of the victim and it appears that she had the knowledge about all those acts allegedly done by Mansajan and the applicants, yet she says that because of her poor situation as well as the fact that she is a widow and was forced or threatened by these applicants, she had not lodged any report earlier. It would be the matter of investigation, as to whether she can be arrayed as an accused or not. But, merely because she was present for marriage, at this stage we cannot come to the conclusion that she should be added as accused. The contents of the FIR are already reproduced and therefore, those are not

repeated here. Taking into consideration the contents of the FIR and also the statement of the victim, it can be seen that when the victim was allegedly ravished by Mansajan, she was aged 13 years. At this stage, none of the applicants have come with the case that birth date of victim is different and she was major. Rather, the birth certificate of the victim has been collected and her birth date is 13th May 2007 and according to the statement of the victim the first act of forcible sexual intercourse was done by Mansajan in 2019. That means victim was around 12 to 13 years of age at that time.

9. In the FIR also it has been stated that since the age of three years the victim is residing with Vandana and Suresh – applicants in ABA No.1418 of 2021. It can be presumed at this stage that comfortable relations would have been established between the victim and applicant Vandana and victim could have shared everything with applicant Vandana. Still it appears that till three months of pregnancy the fact was noticed by applicant Vandana and it could be revealed only when the informant had visited the house of applicant Vandana. When victim was asked, she had disclosed the things and when informant tried to lodge the report, she was stopped by applicant Suresh. We will have to go by the allegations at this stage and if at all any contrary

defence is there, it is for the applicants to prove it at the time of final hearing. Informant has specifically stated that due to the pressure from the sister-in-law and her husband as well as parents of Mansajan, the marriage was performed between the victim and Mansajan. Admittedly, at that time the victim was 13 years old and within six months she has given birth to a child. It is very much painful to note that at the age of 13 / 14 years, the motherhood has been thrashed upon an innocent girl.

10. If we consider the tenor of the ABA No.1608 of 2021 and the submissions made on behalf of those applicants, then they are admitting the fact of marriage. According to them, the informant had forced them to give consent for the marriage between their son and the victim. This is rather unbelievable. It is of course for them to establish the same at the time of recording of evidence. But when they take such stand, they are admitting that there was marriage and the victim was minor. Definitely this amounts to an offence under the Child Marriage Restraint Act.

11. Now, it is tried to be stated by applicants in ABA No.1608 of 2021, i.e. now they can be termed as father-in-law and mother-in-law of the victim, that the marriage was performed

and therefore, Mansajan can take benefit of Exception 2 to Section 375 of the Indian Penal Code. However, on this point reliance can be placed on the decision in ***Independent Thought vs. Union of India, AIR 2018 SC (Criminal)) 229***, wherein the Hon'ble Supreme Court held that, the exception 2 to Section 375 of the Indian Penal Code insofar as it relates to girl child below 18 years is liable to be struck down and it should be read as follows:-

"Sexual intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape."

12. It is to be noted that this Court had earlier taken note of the said decision in two Applications, and by giving detailed reasons, had rejected ***Anticipatory Bail Application No.203 of 2022 (Trimbak S/o Arun Borude vs. the State of Maharashtra and another)*** on 12th April 2022, and rejected ***Anticipatory Bail Application No.118 of 2022 (Ramnath S/o Ashok Shinde vs. the State of Maharashtra)*** on 19th April 2022, which were filed by the husband of the minor wife. The reasons given by this Court need not be reiterated, however, the same can be considered as the reasons for present Applications also, as those are on the basis of law and not on fact.

13. The further facts in this case defer that the marriage has been performed after the girl became pregnant of three months. That means the sexual harassment by Mansajan was prior to the marriage and at that time he was not her husband. On this count also benefit cannot be given to Mansajan that since now he has become husband his acts with his wife will not amount to an offence.

14. In spite of knowledge of all those acts when the present applicants had taken part in performance of the marriage between the victim and accused Mansajan, then definitely such acts cannot be so justified. It is to be noted from the Police papers that victim was admitted to Civil Hospital where her delivery took place. She was admitted by applicant Prakash and at the time of her admission, he had given the name of his son as 'Mukesh' and not as Mansajan and also her age has been stated as 20 years, but then it is stated that he has admitted her as daughter-in-law. Definitely, this appears to be an another attempt to screen themselves. If real age of the victim would have been given at that time, the offence could have been registered immediately thereafter.

15. Therefore, taking into consideration all these facts, definitely this is not a fit case where the applicants should be granted discretionary relief under Section 438 of the Code of Criminal Procedure. Accordingly, both the Applications stand rejected. Interim protection granted by this Court to the applicants in Anticipatory Bail Application-][\[No.1418 of 2021 by order dated 3rd December 2021 stands vacated.

16. Fees of the learned Advocate Mr. P.P. Mandlik appointed to represent the cause of respondent No.2 in both the Applications, is quantified at Rs.7500/- in all, to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI , J.]