

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.204 OF 2022

Saifali Nazir Ahmed Salmani .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.V.S. Tiwari for the Applicant.
Ms.Veera Shinde, A.P.P. for the State/Respondent.
Mr.Ketan Dhavle for the Intervenor.

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CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER, 2022

P.C:-

1. The applicant is charged for the offence punishable under sections 376, (2) (J), (N) and 420 of IPC along with section 4, 8 and 12 of POCSO Act, and came to be arrested on 13/07/2021. Though the charge-sheet describe his age to be 19 years, the counsel for the complainant state, that the said record is incorrect and as on the date of incident his age is 26 years.

The victim is a girl aged 17 years and 6 months and her statement under section 164 has been recorded, where she has stated, that she was acquainted with the applicant via Facebook

in December, 2019, and they exchanged their mobile numbers and thereafter continued to remain in contact with each other through What'sApp messages. In the month of May 2020, she personally met the applicant and in March 2021, the applicant is alleged to have approached her mother for performance of the marriage. The said proposal was accepted but since her age was 17 years, it was assured that as soon as she attain majority, the marriage will be performed.

2. It is further alleged that on the pre-text, that he is going to solemnize marriage with her, he established physical relationship with her on 2 to 3 occasions and even borrowed a sum of Rs. 30,000/- for making necessary arrangement for the marriage. However it is alleged that he left for Uttar Pradesh and has not returned back and even blocked her on the social media.

3. Considering the statement of the victim herself, it can be seen that, she was capable of understanding the consequences of the Act and whether her consent was free or was coerced one will be a matter of trial.

The counsel for the complainant vehemently submit that she being a minor, was incapable of understanding the consequences of the Act.

4. Considering the applicant is accused of Section 420 and the fact that offence under section 4, 8 and 12 of POCSO Act has been *prima facie* made out and he will take the consequences at

the time of trial. His further incarceration appears to be unnecessary, his release is however subject to the stipulation that the applicant shall make himself available and face the trial and the counsel for the applicant make a specific statement that he is residing in Mumbai and therefore any stringent condition can be imposed upon him so that he is available for trial.

5. Hence the following order

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant – Saifali Nazir Ahmed Salmani shall be released on bail in connection with C.R.No.479/2021 registered with Jogeshwari Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

The applicant shall be released on cash bail in lieu of sureties for a period of 4 weeks.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (d) The applicant shall mark his attendance on first Monday of the every month between 10:00 a.m to 12:00 noon till framing of charge, and make himself available as and when required by the Investigating Officer.
- (e) The applicant in any way shall not establish contact with the prosecutrix.
- (f) The applicant shall attend the trial on regular basis.

(g) The applicant shall not leave city of Mumbai without permission of the Special Court.

(SMT. BHARATI DANGRE, J.)