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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

BAIL APPLICATION NO. 1946 OF 2021

Samadhan Balasaheb Jaykar ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Aniket Nikam a/w. Piyush Tashniwal a/w. Amit Icham a/w.
Aashish Satpute i/b. Vivek Arote for Applicant
Mr. M.G. Patil , APP for the State/Respondent No.1
Mr. M.S. Ansari for Respondent No.2/ Original Complainant
API- Nitin N. Atkare- Shikrapur Police Station , Pune-Rural

CORAM : SANDEEP K. SHINDE J.
DATE : 11th NOVEMBER, 2022.

PC. :

1. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Complainant.
2. Applicant seeks his enlargement on bail in connection with Crime No. 296/2020 dated 7th May, 2020 registered with Shikrapur Police Station, Dist. Pune for the offences punishable under Section 376, 468, 471, 363, 366, 354, 506 r/w. 34 of Indian

Penal Code and under Sections 3,4,8 and 12 of The Protection of Children from Sexual Assault Act, 2012.

Prosecution Case

3. It is evident from the charge-sheet, that on 24th December, 2019 victim and the Applicant got married, at Augusti Mangal Karyalaya (Marriage Bureau) in presence of witnesses. Soon thereafter, couple intimate police that they got married. Intimation, states that both being of marriageable age, they performed the marriage at their will. Victim did not disclose this fact to anyone. However, nearly after five months some one sent marriage ceremony photos and copy of marriage certificate on cellphone of victim's mother. Thereupon, mother inquired with the victim, as to about the photographs and the marriage certificate. Victim told her that on 24th December, 2019, the Applicant forced her to accompany the marriage bureau, where marriage was performed and registered. Thus, mother lodged a report on 7th May, 2020. Police registered crime under Section 354, 363 and 366 against the Applicant. The statement of victim was recorded on

same day, but did not allege that applicant subjected her to sexual assault. However, a week thereafter i.e. on 15th May, 2020, victim and her mother alleged that victim was forced to surrender to physical desire of the applicant on multiple times. Whereupon offences under Section 376 and POCSO came to be registered, against the applicant.

4. Although at the relevant time, the Applicant was 14 year and 10 months old, however, the material in the charge-sheet indicates and suggests that the Applicant and the victim, both forged their birth details, to show they were of marriageable age. This fact is evident from the statement of manager of the marriage bureau. Even otherwise, the intimation to the police states, that the victim and the Applicant, were of the marriageable age. This intimation bears signature and photograph of the victim. Thus, prima facie it is apparent that the victim volunteered to accompany the Applicant and perform the marriage at her will. Thus, looking into the case of the prosecution, prima facie I am of the view, that victim possessed mental capacity to actively understand nature,

circumstances and consequences of the act to which she had consented. Moreover, when the complaint was lodged on 7th May, 2020, neither victim nor her mother alleged that the victim was subjected to sexual assault by the applicant. It was week after, the victim and her mother made such allegations against the Applicant. Thus, in view of the facts stated above, the Application deserves to be allowed. Thus, the following order:

ORDER

- (i) The applicant in Crime No. 296/2020 registered with Shikrapur Police Station shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum;
- (ii) The applicant shall attend the concerned police station as and when called;
- (iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail;
- (iv) The applicant shall not tamper with the evidence or

attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant shall attend concerned police station as and when called and co-operate in the investigation;

(vi) The application is accordingly allowed and disposed of.

It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)