

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

CRIMINAL BAIL APPLICATION NO.2739 OF 2021

Ramkaran Bansidher Yogi & Anr. ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.S.R. Ingawale for the Applicants.

Mr.R.M. Pethe, APP for the Respondent –State.

Mr.M.V. Rajput for Respondent No.2.

CORAM : C.V. BHADANG, J.

RESERVED ON : 17 JANUARY 2022

**PRONOUNCED ON : 20 JANUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicants (Accused Nos.2 and 3) are seeking bail. The Applicants along with the co-accused have been charge-sheeted for the offence punishable under Section 328, 363, 366, 376(2)(b)(n), 342, 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 4,8 and 12 of the Protection of Children From Sexual Offences Act, 2012.

2. The victim girl is resident of District-Hojai Banka, Asam and was married to Vijay Thapa about 4 years prior to the lodging of the complaint dated 10 January 2021. The victim had

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a 3 year old daughter from her marriage and she claims to be carrying a pregnancy of 6 months, at the time of the filing of the complaint.

3. Somewhere in September 2020 she was called by her maternal aunt, where the Applicants along with the co-accused were present. According to her she was given an intoxicating drink and when she regained consciousness, she found herself in a Hotel in Hojai Asam with the present Applicants and the co-accused Kajal. She claims that her mother was called and she was forcibly married with the Applicant Ramkaran Yogi in a nearby temple against her wish. She and her mother were threatened that they will kill her minor daughter, if she does not agree for the marriage. Subsequently Applicants took her to their native place at Medhgaon, Rajasthan at the house of the Ramkaran Yogi, where she stayed for two months, after which the Applicants took her to Kolhapur where she was residing along with the Applicants in rented premises of Mr.Nitin Doiphode at Pachgaon, District-Kolhapur. According to her, both the Applicants were keeping forcible sexual relations with her and she was also forced to have sexual relations with three unidentified persons brought by the Applicant Ramkaran Yogi. She was also abused and assaulted. Ultimately on 8 January 2021, she took help of Shradha Mali and her husband Shivaji Mali who were neighbours at Pachgaon and disclosed the incident to them, after which the complaint was

filed. It appears that on same day the supplementary statement of the victim came to be recorded and after investigation a charge-sheet is filed.

4. I have heard the learned counsel for the Applicants and the learned Additional Public Prosecutor and the learned counsel for the Respondent-Complainant.

5. It is submitted by the learned counsel for the Applicants that the victim was admittedly married and had a daughter from her marriage and it is not probable that the Applicants along with co-accused would force her to marry again and take her to Rajasthan, where she claims to have stayed for about 2 months and thereafter, at Pachgaon, District-Kolhapur.

6. The learned counsel has referred to the statement of the father of the victim in this regard. He submitted that the victim has now returned to her parents and the investigation being complete, no purpose is served by further detention of the Applicants who are natives from Rajasthan.

7. The learned counsel for the Applicant tendered a pan card of the victim showing her date of birth as 5 June 1998. He therefore submitted that the date of birth as claimed by the

prosecution i.e. 5 June 2003 is not correct. He therefore submitted that the victim was a major girl and not a child.

8. The learned Additional Public Prosecutor assisted by the learned counsel for the Respondent-Complainant has submitted that the victim was a child in September 2020 and offence is serious as she was repeatedly subjected to forcible sexual intercourse by the Applicants and even by strangers allegedly brought by the Applicant Ramkaran

9. I have considered the submissions made. There is a birth certificate issued by the Registrar of births and deaths, Nagaon, Asam which shows that the date of birth of the victim is 5 June 2003. The copy of the Adhar card also shows the same date of birth. Thus *prima facie* it appears that she was a child in September 2020 within the meaning of the POCSO Act.

10. Although she claimed that she was married and had a child, there are statements to show that there was a ceremony in the nature of marriage which was undergone at District-Hojai Banka, Asam between the Applicant Ramkaran and the victim after which she was taken to Rajasthan and thereafter at Pachgaon, District-Kolhapur. *Prima facie* the statements indicate that she was subjected to repeated sexual intercourse. She claims that she was carrying a pregnancy and she was also coerced into

keeping sexual relationship with strangers. Thus the offence is serious. There is a declaration of marriage which is notarized document which is dated 3 November 2020 which is produced on record to show that Applicant Ramkaran married with victim on 31 October 2020 on which date also the victim would be a minor and not of marriageable age. There is *prima facie* case showing the involvement of the Applicants.

11. In addition, the Applicants are shown to be residents of Rajsthan without any roots in District-Kolhapur where they were staying in rented premises. Thus the possibility of the Applicants not being available for trial cannot be ruled out.

12. Considering the overall circumstances, no case for grant of bail is made out. The Criminal Bail Application is rejected.

C.V. BHADANG, J.