

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (BA) No. 457 of 2022

Mukesh Kumar S/o Rameshwarlal Jakhar

Versus

State of Maharashtra, through Police Station Officer, Police Station
Panchpaoli, Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.M.Nafde, Advocate for the applicant.

Shri A.R.Chutke, APP for the State / Non-applicant

Ms. Shalini Godbole, appointed advocate for the
non-applicant no.2.

CORAM : ANIL S. KILOR, J.

DATED : 5th August, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 9 of 2022 registered with Police Station Pachpauli, Dist. Nagpur for the offence punishable under Sections 363, 366, 343, 376(2)(n), 370, 506 read with Section 34 of Indian Penal Code.

2. Shri Nafde, learned counsel for the applicant submits that the only role attributed to the applicant is that he performed marriage with the victim. He submits that the victim is 21 years of old and

marriage photographs do not show that the victim performed marriage against her wish or without free will.

3. Shri Nafde, learned counsel for the applicant further submits that the applicant is in jail since 22nd February, 2022 i.e. for about six months and in this case after completion of the investigation, the chargesheet has been filed, as such his further custody is not required.

4. He further points out that even though the victim had many opportunities to raise alarm, she did not make complaint if anything had gone wrong with her. He therefore submits that considering the over all materials available on record, there are less chances of the applicant being convicted. Accordingly, he prays for grant of bail.

5. On the other hand, learned Additional Public Prosecutor fairly points out few relevant dates from the chargesheet namely, the victim reached Nagpur on 22nd September, 2021 and from Nagpur she went to Jaipur on 28th September 2021 and on 25th December, 2021 a missing report was lodged by the sister of the victim and thereupon, the victim was taken into custody by the police, from Jaipur, from the house

of the applicant. The victim performed the marriage with the applicant on 19th December, 2021.

6. Ms. Godbole, learned counsel for the victim strongly opposed the application and she submits that this a case of human trafficking and it is a serious offence. It is submitted that there are serious allegations that, the victim was sexually abused. She further submits that only because the applicant had performed the marriage with victim is not sufficient, when the marriage itself was against her wish. Accordingly, she prays for rejection of the present application.

7. I have perused the chargesheet and the First Information Report.

8. From the photographs of the marriage of the applicant with the victim, *prima facie* it can be said that, there is nothing from which it can be gathered that, the marriage was performed against the wish of the victim. It does not show that she was intimidated or she was under any threat.

9. As far as the allegations relating to the co-accused and the incident which took place prior to the marriage of the applicant, there is nothing to show that applicant was knowing about it and he was part of it.

10. Moreover, the record shows that on 22nd September, 2021, the victim came to Nagpur and from Nagpur she went to Jaipur on 28th September, 2021 and the marriage was performed with the applicant on 19th December, 2021.

11. The said marriage with the applicant was the second marriage. The first marriage was with co-accused Sanjay. Thus, from 22nd September, 2021 till 19th December 2021 or even thereafter she had got ample opportunities to raise voice against the alleged illegality.

12. The record shows that on a complaint, by sister about missing of the victim, on 25th December, 2021 i.e. after three months, the police had taken the victim in custody from the house of the applicant, where she was staying as a wife of the applicant.

13. In the aforementioned circumstances and considering the fact, that the investigation is over and the applicant is in jail from last six months, I am of the opinion that particularly taking into consideration the role attributed to the applicant in this case, he is entitled for grant of bail.

14. As far as the apprehension expressed by the learned counsel for the victim that, if the applicant is released on bail, he may pressurize the prosecution

witnesses, the said apprehension can be addressed by imposing certain stringent condition. Accordingly, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that the applicant shall be released on bail in Crime No. 9 of 2022 registered with Police Station Pachpauli, Dist. Nagpur for the offence punishable under Sections 363, 366, 343, 376(2)(n), 370, 506 read with Section 34 of Indian Penal Code, on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount;
- iii. The applicant shall not enter the territorial jurisdiction of Raipur City where the victim is staying, till culmination of the trial;
- iv. The applicant shall attend Ringas Police Station, Dist. Shikar (Rajasthan) on 1st and 16th of each month between 10 am to 12 noon till culmination of trial.
- v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not to tamper with the evidence;

vi. State is at liberty to apply for cancellation of bail, in case the applicants commits similar offence and any breach of the conditions.

vii. Fees of Ms. Godbole, learned appointed Advocate be quantified as per rule.

[ANIL S. KILOR, J.]

Digitally signed
by
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