

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

CRIMINAL APPLICATION (BA) NO.521 OF 2022

Rajaram Mangilal Yadav

Versus

State of Maharashtra, through P.S.O., P.S. Kapil Nagar, 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 Y.Y. Humne, Advocate for the applicant.

Shri M.J. Khan, A.P.P. for the non-applicant No.1/State.

Mrs. Sonali Saware Gadhave, Advocate for the non-applicant No.2/victim
(appointed).

CORAM : ANIL S. KILOR, J.

DATED : 26/07/2022

1. The applicant is seeking bail in Crime No.81 of 2022, dated 01.03.2022, registered with Police Station Kapil Nagar, District: Nagpur, for the offences punishable under Sections 363, 366-A, 368, 376(2)(n), 370, 370(A), 504 and 120-B of the Indian Penal Code and Sections 4, 6, 8, 10 and 11 of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act") and Sections 9 and 11 of the Prohibition of Child Marriage Act.

2. Shri Humne, learned counsel for the applicant submits that the applicant who is a father of a boy who got married with the victim and the allegations are that though the applicant was knowing that the victim is minor, he performed the marriage of his son with the victim.

3. He submits that as far as the other offences are concerned, if the allegations are seen, no offence attracts against the applicant.

4. He further submits that the applicant is in jail since 12th March, 2022 and as the investigation is completed, his further custody is not required. Accordingly, he prays for grant of bail.

5. On the other hand, Shri M.J. Khan, learned APP strongly opposes the present application and he points out that the marriage of the victim was performed with the son of the applicant without her consent and for that an amount was paid to the co-accused who introduced the applicant and his son with the victim.

6. It is submitted that the offence is very serious and considering the character of evidence collected by the Investigation Officer during the investigation, this Court may not grant bail to the applicant.

7. Mrs. Sonali Saware, learned counsel for the non-applicant No.2/victim reiterates the submissions of the learned APP and submits that against the wish of the victim, the applicant forced her to marry with his son and though it was told to the applicant that she is minor, he did not pay any heed to it. She, therefore, submits that Sections 9 and 11

of the Prohibition of Child Marriage Act, will attract against the applicant.

8. I have perused the Charge-sheet and the First Information Report (FIR).

9. *Prima facie*, on perusal of the charge-sheet and other material, it appears that there is no material to show that the applicant was knowing the background in which the victim was kidnapped or taken away from the lawful custody of her mother. The statements of the witnesses show that the co-accused introduced the victim to the present applicant and his son and thereupon on finding that the victim is suitable for the marriage with his son, the applicant agreed to perform the marriage of his son with the victim and accordingly, the marriage was performed. It further appears that the victim is a minor and the allegations show that against her wish, the marriage was performed.

10. Thus, considering the allegations and statements of witnesses, it will be the matter of trial whether Sections 363, 366-A, 368, 376(2)(n), 370, 370(A), 504 and 120-B of the Indian Penal Code, will apply to the present applicant. Particularly, *prima facie* any incriminating material available against the applicant, attracting the said offences. In the circumstances, as the applicant is in jail since March, 2022 and the investigation is completed, I am

of the opinion that further custody of the applicant is not necessary, in this case. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No. 81 of 2022, dated 01.03.2022, registered with Police Station Kapil Nagar, District: Nagpur, for the offences punishable under Sections 363, 366-A, 368, 376(2)(n), 370, 370(A), 504, 120-B of the Indian Penal Code and Sections 4, 6, 8, 10 and 11 of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act") and Sections 9 and 11 of the Prohibition of Child Marriage Act, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station on 1st of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- d) The applicant shall not tamper with the prosecution witnesses.

- e) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- f) The State is at liberty to apply for cancellation of bail, in case breach of condition.
- g) Fees of the learned counsel for the non-applicant No.2/Victim, be quantified as per the Rules.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]