

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

CRIMINAL APPLICATION (BA) NO. 1294/2021

Syed Danish Syed Javed Ali..Versus...State of Maharashtra and anr

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

Court's or Judge's orders

Mr. M.N.Ali, Advocate for the applicant.
Mr. A.R.Chutke, APP for Respondent/State.
Ms. S.S.Dhote, Advocate for Victim

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/02/2022

1] Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard Mr. Ali, learned counsel for the applicant. The present application seeks the release of the applicant on bail for the offence under Sections 376, 366, 452, 354, 354(D), 504, 506 of the IPC r/w Sections 4, 8, 12, 9, 10 of POCSO Act, in Crime No. 577/2021.

3] Mr. Ali, learned counsel for the applicant submits that there was an affair between the victim and the applicant, which was opposed by the parents of the victim, as a result of which the victim had eloped with the applicant and had also performed marriage with the applicant. The Nikahnama is placed on the record. He therefore submits that considering

the statement of the witnesses viz. Raja Rajik Shah (page 170), Anjum Raza Sheikh (page 171), and so also Ansar Ahmade Mohd. Ishaq (page 157) as well as the CDR record at page 201, which all substantiate the factum of the affair between the victim and the applicant, the applicant is entitled to bail.

4] Mr. Chutke, learned APP opposes the application and submits that the victim is a minor, aged 16 years, as per her birth certificate issued under the Registration of Births and Deaths Act, by the Heath Officer, Amravati Municipal Corporation (page 48), considering which the question of the consent & marriage of a minor would not arise and therefore, the plea which is sought to be raised by the applicant that there was an affair which has led to the marriage would be of no consequence. He further submits that the victim herself had specifically made allegations, about her abduction and forcible marriage with the applicant and therefore, the contention that the action on part of the applicant in taking away the applicant and getting married to her cannot be said to be a voluntary one, which even otherwise, considering that the victim was minor, cannot be countenanced. He therefore submits that the application deserves to be rejected.

5] Ms. Dhote, learned counsel for the victim supports the contention of the learned APP and submits that

since the victim was a minor, the consent of the victim as claimed by the applicant was immaterial.

6] Having heard the learned counsels for the parties, in my considered opinion, the certificate dated 5.8.2021 issued by the Health Officer, Amravati Municipal Corporation, which demonstrates the date of birth of the victim as 10.2.2005 unequivocally indicates that on the date of the incident i.e. on 14.8.2020, she was minor, considering which though it is claimed that her marriage was conducted with her consent, the consent becomes inconsequential due to her minority. Though Mr. Ali has relied upon the statements of Ansar Ahmade Mohd. Ishaq and Raja Rajik Shah, the same is contradictory to the plea which is being raised by the applicant, that the marriage was with the consent of the victim, consequent to a love affair between them. Considering the nature of the offence and the fact that the victim was a minor on the date of the incident, I am not inclined to accept the contentions raised by Mr. Ali, learned counsel for the applicant. I therefore do not find any merits in the application, the same is accordingly rejected.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:02.02.2022 15:22