

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.186 OF 2023

**IMRAN YUSUF QURESHI @ MULLA KATTAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Mr. S. S. Jadhav, Advocate for the Applicant.

Mr. D. R. Kale, PP for Respondent No.1.

Mr. M. K. Bhosale, Advocate for Respondent No.2.

Mrs. Renuka Ghule-Palve, Advocate for Respondent No.2
(Appointed through Legal Aid).

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 16th OCTOBER, 2023.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.631/2022 dated 19.07.2022 registered with Shrirampur City Police Station, District Ahmednagar, for the offences punishable under Sections 363, 366, 376(2)(n), 295(A) of the Indian Penal Code and Sections 3, 4, 5(j)(ii)(L)(Q) of POCSO Act and Sections 3(1)(w)(i)(ii), 3(2)(v), 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 142 of the Maharashtra Police Act and Sections 236(2), 177 of the Motor Vehicle Act.

2. The investigation was set in motion on the basis of the information given by the paternal aunt of the victim, who states that the victim's father expired long back. Even, her mother left her in the childhood. The date of birth of the victim is 05.04.2006. She was taking education in 7th standard in the year 2019. The applicant kidnapped her, when the victim was hardly aged about 13 years and converted her into Islam, performed Nikah and sexually exploited her. She conceived pregnancy at the age of 16 years. It is further alleged that the applicant is hardened

criminal. His *modus operandi* is to kidnap the minor girls between age group of 11 to 16 years and sexually exploit them. Because of his terror in locality, no one dares to come forward and file complaint against him. In that view of the matter, in the case of victim the FIR was not lodged, but since she has conceived pregnancy at such tender age, the informant came forward with great courage to lodge the complaint. With this report, the Crime No.631/2022 has been registered with the Shrirampur City Police Station for the aforesaid offences. The applicant came to be arrested on 19.07.2022. Since then, he is behind the bar. It appears that, the victim delivered a child. The DNA report regarding paternity confirms the applicant to be the biological father of the child.

3. Mr. Jadhav, learned Advocate appearing for the applicant submits that the complaint in respect of the incident of the year 2019 is lodged in the year 2022. There is inordinate delay of three years in lodging the complaint. The FIR is lodged by the paternal aunt of the victim. No complaint is lodged by the victim or her mother. He invites attention of this Court to the statement of the victim and affidavit filed by her mother, which contents that they have no complaint against the applicant. He would submit that the applicant is behind the bar for more than one year. His further detention would not be necessary. He would further point out that the mother of the victim had filed Criminal Writ Petition before this Court for Writ of Habeas Corpus seeking custody of the minor victim.

4. The learned Advocate appearing for the informant, so also the learned PP for the State strongly oppose the prayer for grant of bail. They would submit that at the age of 13 years, the victim was kidnapped while returning from school. She was

subjected to Nikah and ravished by the applicant. She conceived pregnancy at the age of 16 years. The DNA report confirms the paternity of the applicant. They would submit that at the time of offence the victim was child as defined under Section 2(1)(d) of the POCSO Act. They would further invite attention of this Court to the supplementary statement of the informant to contend that the applicant had kidnapped the victim from school and forcibly carried her on the motorcycle. Thereafter, she is converted to Islam and Nikah is performed. The statement of Rani Phajage, who is schoolmate of the victim confirms about the incident of kidnapping. There is statement of brother of the victim, who also confirms the aforesaid facts. The school record and the birth certificate clearly demonstrate the date of birth of the victim as 01.08.2005. There are statements of the other victims, who are subjected to forcible sexual intercourse and the marriage by the applicant. The learned PP points out that as many as 19 offences have been registered against the applicant, which includes the serious offences against the human body. Therefore, nobody dares to complaint against him. They would submit that the mother of the victim is infact helping the applicant. She is usually changing her stand. Her prayer for grant of custody in the Writ of Habeas Corpus is rejected by this Court observing her conduct.

5. Having considered the submissions advanced, it is apparent that the victim was hardly 13 years of age at the time of incident. She conceived pregnancy at the age of 16 years and delivered a child. The DNA report confirms the applicant's paternity of child born to victim. It is clear that the victim was a child as defined under Section 2(1)(d) of the POCSO Act, when she conceived pregnancy. The aforesaid fact clinchingly pin points the guilt against the applicant for the offences punishable under the provision of POCSO Act as wells as Indian Penal Code. Although,

there is delay in lodging the FIR, in light of the aforesaid impeccable evidence, the delay cannot be given much importance at this stage. However, explanation to the delay can be gathered from the facts on record. It is a matter of record that the applicant is hardened criminal. There are 19 offences registered against him. The police papers show his *modus operandi* of dealing with the minor girls by putting them to sexual assault and converting their religion. The other offences are against human bodies, which are sufficient to gather terror propagated by the applicant in the locality. The contention of the prosecution that nobody dares to complaint against him cannot be ruled out at this stage.

6. Although, the victim herself has given favourable statement in support of the applicant and even her mother supports the applicant that itself cannot be capitalized in favour of the applicant in light of aforesaid background. One can visualize the pressure exerted on their minds. Atleast, paternal aunt dares to lodge the report that is how, the heinous act of the applicant could be surfaced.

7. Mr. Bhosale, learned Advocate appearing for respondent no.2 has rightly pointed out that once DNA report confirms the paternity of the child born to the minor, even hostility of the victim cannot be given importance. Apparently, the conduct of the applicant surfaced from the record do not call for exercise of discretion under Section 439 of the Criminal Procedure Code in his favour.

8. Mr. Jadhav, learned Advocate appearing for the applicant relied upon the order passed by this Court in ***Bail Application No.1214/2023*** in the matter of ***Prashant @ Pappu***

Dadasaheb Gore Vs. The State of Maharashtra and Another dated **01.08.2023** and submits that in similar circumstances when the victim after attaining majority filed the affidavit stating that she has no complaint against the accused, this Court exercised discretion and released the accused on bail.

9. With due respect, the observations of the Court in Bail Application No.1214/2023 cannot be applied as a rule. Apparently, in the facts of that case when the victim after attaining majority shown her desire to continue matrimonial relationship with the applicant, the discretion for granting bail is exercised by this Court. In the present case, still victim is minor. Further there is DNA report confirming the paternity of the applicant to support the fact that child of applicant delivered by the victim at the age of 16 years. Taking over all survey of the matter, no case is made out for grant of bail. Hence, the application is rejected. However, it is made clear that observations hereinabove are based on *prima facie* consideration of record for disposal of this application.

10. Since Mrs. Renuka Ghule Palve, learned Advocate is appointed through the Legal Aid Panel, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2/victim as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE