

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
APPLICATION FOR CANCELLATION OF BAIL NO.92 OF
2023**

XYZ
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Amit S. Savale, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondents-State.
Mr. A. D. Sonar, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 14th SEPTEMBER, 2023.**

PER COURT:-

1. The guardian of the victim impugns the order dated 20.05.2023 passed by the learned Additional Sessions Judge, Dhue in Criminal Bail Application No.361/2023, by which respondent no.2 is granted bail in Crime No.90/2023 registered with the Songir Police Station for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code and Section 4 of the POCSO Act.

2. Mr. Savale, learned Advocate appearing for the applicant would submit that the learned Sessions Judge granted bail without considering vital material that would *prima facie* establish heinous offences against respondent no.2/accused. He would submit that the victim was hardly aged about 16 years and 2 months at the time of the incident. On basis of the false documents, she is shown to be major and marriage is alleged to have been performed with respondent no.2. He would submit that the statement of the victim recorded under Section 164 of the Criminal Procedure Code is not taken into account while considering the plea for bail moved on behalf of respondent no.2.

He would submit that birth certificate of the victim clearly depicts that her date of birth is 08.02.2007. As such, she was a minor and her marriage or consent would be inconsequential. He would further point out that although victim left her house because of affinity with respondent no.2, further act committed against her are inhuman and forcible in nature, which attracts penalty for the offences alleged.

3. The learned Advocate appearing for respondent no.2 vehemently opposes prayer for cancellation of bail. He would submit that the learned Sessions Judge has considered material on record including the statement recorded under Section 164 of the Criminal Procedure Code. By referring to the paragraph nos.5 and 7 of the order he would point out that there is specific mention about statement recorded under Section 164 of the Criminal Procedure Code and that has been considered by the Sessions Court. He would invite attention of this Court to the school record of the victim, wherein her date of birth has been recorded as 04.07.2004. He would also invite attention of this Court to the bonafide certificate issued by the Junior College, wherein similar date of birth is recorded. He would further invite attention of this Court to the marriage certificate and consent recorded by victim, wherein she has mentioned her age to be more than 18 years.

4. Considering the aforesaid submissions in light of the documentary evidence available in the charge-sheet, apparently there is dispute regarding date of birth of the victim. Mr. Savale, learned Advocate relies upon the birth certificate of the victim, which depicts her date of birth as 08.02.2007. He also relies upon

the marriage certificate of the parents of the victim, which shows that they married in the year 2005. However, there is nothing on record to contradict the school record relied on behalf of respondent no.2, wherein date of birth of the victim is recorded as 2004. Therefore, all these issues will have to be resolved during the trial. Apparently, the statement of the victim shows that she had voluntarily left the house of her parents to live in the company of respondent no.2. There is no dispute that marriage was performed and it is registered. The Sessions Court has recorded the adequate reasons in support of the order granting bail. In that view of the matter, no case is made out to interfere in discretionary relief granted by the Sessions Court. Hence, the application is rejected.

(S. G. CHAPALGAONKAR)
JUDGE