

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1102 OF 2022

ANANT SAHEBRAO NIKAM

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. H.P. Randhir, Advocate for the Petitioner.

Mr. S.D. Ghayal, APP, for the Respondent – State.

Mr. M. M. Deshmukh h/f Mr. Rohit Sawale, Advocate for  
the Respondent No. 2.

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CORAM : SMT. ANUJA PRABHUDESSAI &  
R.M. JOSHI, JJ

DATE : FEBRUARY 08, 2023

**PER COURT :**

1. At the outset, learned Counsel for the  
Petitioner seeks leave to amend the prayer clause 'B'  
so as to give details of the special case and the  
report.

2. Leave granted. Amendment to be carried out  
forthwith.

3. With consent, heard finally at the stage of  
admission.

4. This is a Petition filed under Article 226 of  
the Constitution of India read with Section 482 of the  
Code of Criminal Procedure, 1973 to quash the first

information report no. 09/2022 registered with City Chowk Police Station, Aurangabad and Special Case No. 71/2021 pending on the file of Special Court, Aurangabad for the offences punishable under Sections 376(2)(j), 506 & 34 of the IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 & Section 9, 10 & 11 of the Child Marriage Restraint Act, 2006.

5. Heard learned Counsel for the Petitioner, learned APP for Respondent - State and learned Counsel appearing for Respondent No. 2.

6. We have perused the records and considered the submissions advanced by the learned Counsel appearing for the respective parties.

7. The aforesaid crime was registered pursuant to the first information report lodged by the Respondent No. 2 - Victim wherein she had alleged that on 15.12.2021 co-accused - Ishtiyak had compelled her to accompany him under the threat of causing death of her father and brother. She stated that on 16.12.2021 co-accused took her to the office of one Kazi and told her

that he would perform their marriage. She further stated that when she refused to marry the co-accused, he once again threatened her. She further stated that co-accused took her to the office of one Kazi and introduced to one Ashu as Vakil and two other persons as witnesses. She stated that her marriage was performed against her will. She has further alleged that on 26.12.2021 co-accused had sexual intercourse with her claiming that she was his legally wedded wife. It is on the basis of these allegations, aforestated crime came to be registered.

8. It is stated that the Petitioner is an Advocate and the allegations against him are that he had performed the marriage of the victim and the co-accused Ishtiyak in his office. Except this there is no other allegation against Petitioner in the first information report. The victim and the other witnesses have neither disclosed the name of the Petitioner nor has she given address of his office. None of the witnesses have identified the persons who had performed the marriage of the victim and the co-accused. Though learned APP states that the victim had shown the office

of the Petitioner, the same would not be *per se* sufficient to make out any offence against the Petitioner under the provisions of Prohibition of Child Marriage Act, 2006. The first information report as well as the statement under Section 161 of Cr.P.C does not show involvement of the Petitioner in performance of the child marriage or committing any other cognizable offence.

9. In absence of such material, subjecting the Petitioner to face criminal trial will be an abuse of the process of Court. Under the circumstances, in our considered view the case is squarely covered by illustrations (1) and (3) in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and Others reported in 1992 AIR 335. Hence, this is a fit case to exercise powers under Section 482 of the Cr.P.C to prevent abuse of the process of the Court.

10. In the result, the Petition is allowed in terms of prayer clause 'B'. Consequently, FIR no. 09/2022 registered with City Chowk Police Station, Aurangabad and Special Case No. 71/2021 pending on the file of Special Court, Aurangabad for the offences

punishable under Sections 376(2)(j), 506 & 34 of the IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 & Section 9, 10 & 11 of the Child Marriage Restraint Act, 2006 are quashed qua Petitioner herein.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)