

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

939 BAIL APPLICATION NO.1478 OF 2023

**ABHAY SHIRISH GAVIT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Applicant : Mr. Ram S. Shinde
APP for Respondents: Mr. S.P. Deshmukh
Advocate for Respondents : Mr. S.B. Madde.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 5th SEPTEMBER, 2023

ORDER :-

The applicant seeks regular bail in connection with Crime No. 341 of 2023 registered with Police Station, Navapur, Dist. Nandurbar for the offence punishable under Sections 3,4,5,J(2)(L) and 6 of the POCSO Act.

2. The investigation was set in motion on information to the effect that daughter of the informant used to stay at home while the informant and her husband used to go out for work. The applicant/accused who is son of the sister in law of the informant. He used to visit her home in absence of informant and her husband, when her minor daughter who is pursuing education in 9th Standard was staying at home. It is alleged that few days prior to the FIR, it was revealed that the minor daughter of the informant is pregnant. On inquiry, she disclosed that the applicant had physical relations with her

and as such, she conceived pregnancy. It is further alleged that the sister in law of the informant assured that they will solemnize the marriage of applicant with the victim. However, subsequently, refused to do so. Hence, information is given to the police station, which culminated into registration of FIR bearing No. 341 of 2023.

3. Mr. Ram Shinde, learned advocate for the applicant submits that the applicant is aged about 18 years. The victim and the applicant are close relatives and are from Adivasi society. There is a custom of early marriages . There was sexual relationship between the victim and the applicant. It was agreed that they shall marry each other. Therefore, he submits that the detention of the applicant would not enure any benefit. He would further submit that the informant has filed her affidavit before the Sessions Court disclosing her intention not to proceed with the prosecution and also the fact that they wish to accept the applicant as their son-in-law and perform the marriage of victim with the applicant.

4. Mr Deshmukh, the learned APP, on the other hand, opposes the prayer for grant of bail stating that the victim is aged about 14 and half years. The applicant who is in close relation has forcibly established sexual relationship with the victim. He would submit that consent is immaterial in such case. The victim is pregnant of about 9 months and at such advance stage, pregnancy was detected. The applicant and his family members had denied settlement of marriage.

5. Having considered the submissions advanced, apparently, the

applicant and victim, both belong to Tribal community. The courts have taken judicial note of the fact that there are settlement of early marriages in Tribal community. The applicant is aged about 18 years. The family of the applicant and victim are close relatives. It is brought to the notice of this court that both the families have decided to accept the relationship of applicant and victim and they are ready to perform their marriage. Reading of the statement of victim under Section 164 would show that the victim is a school going girl having sufficient understanding. The applicant is close relative and both of them have maintained consensual physical relationship. In the aforesaid background, no purpose would be served by continuing the detention of the applicant behind bars.

6. Hence, the following order :-

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Abhay s/o. Shirish Gavit, be released on bail on furnishing P.B. and S.B. of Rs. 25,000/- with one solvent surety of the like amount, in aforementioned crime registered with aforementioned police station on the following conditions :-
 - (a) He shall not tamper with the prosecution witnesses.
 - (c) He shall attend the trial on each and every effective date.
 - (d) He shall visit the police station, once in a week, i.e. on every Saturday between 10.00 a.m. to 2.00 p.m. till filing of charge sheet.

[S.G. CHAPALGAONKAR]
JUDGE