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Sr. No. 906 BA.odt

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

BAIL APPLICATION NO.2042 OF 2023

**AFSAR MOHAMMAD S/O MOHAMMAD ALI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. Angad Lala Kanade
APP for Respondents: Mr. S.A. Gaikwad.
Advocate for R02 : Mr. Moin Pasha Shaikh Farid.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 5th DECEMBER, 2023

ORDER :-

1. The applicant is seeking regular bail in connection with Crime No. 125 of 2023 dated 24.5.2023 registered with Umri Police Station, Dist. Nanded, for the offences punishable under Sections 363, 76(2)(N)(F)(J), 376(D) of IPC and Sections 4,6,8 and 12 of POCSO Act, 2012.

2. The investigation was set in motion on the basis of the complaint given by Syed Samir Syed Arif, who claims to be maternal uncle of the victim. It is alleged that his niece/victim had been to his house since last one month. On 23.5.2023, he went to market alongwith his wife. The husband of his elder sister (present applicant) induced the victim and abducted her under the pretext of marriage.

3. On the basis of aforesaid information offence under Section 364 was registered against the applicant. During the course of investigation, statement of victim dated 3.6.2023 is recorded under

Section 161 of Cr.P.C. wherein, she specifically states that she had love affair with the applicant. She left the house on her own volition on 23.5.2023. They performed marriage at Jagatyal and then proceeded to Bhopal, thereafter, returned back on 26.5.2023. They were living as husband and wife and they had physical relations. The statement of the victim is recorded under Section 164 of Cr.P.C., wherein, she repeats similar version. The applicant has been arrested on 3.6.2023. Since then he is behind bars. His prayer for grant of bail has been rejected by the Special Judge (POCSO), Bhokar vide order dated 4.10.2023.

4. The learned advocate for the applicant would submit that there was consensual sexual relationship between the victim and applicant and they have performed marriage as per the customs and rituals of personal law. He would submit that there is nothing to show any inducement or force exercised by the applicant against the deceased.

5. Learned APP strongly oppose the prayer for grant of bail. He would submit that the victim is minor aged about 16 years. The applicant is major and married person. He induced the victim and established physical relations under the pretext of marriage. As such, he urges to reject the application.

6. Learned advocate appearing for the victim submits that the victim and her mother do not have any objection, if the application for bail is considered and applicant is released on bail.

7. Having considered the submissions advanced, apparently, the FIR is lodged by the maternal uncle of the victim. No complaint was lodged by mother of the victim. Apparently, the applicant is more than 16 years of age taking education in Madarsa and she had developed affinity with the applicant. Both of them left the home, went to Jagatyal near Bhopal where they performed marriage as per the Muslim rites and

customs. When they returned back to their place at Korutlla, the applicant has been arrested on 3.6.2023. Since then he is behind bars.

8. Perusal of the statement of the victim recorded under Sections 161 and 164 of Cr.PC. clearly depicts that neither she was induced nor forced by the applicant to have sexual relations. The victim was subjected to medical examination. The history narrated by the victim depicts that she had gone alongwith the applicant at her own violation and she had sexual relations with the applicant. Considering the aforesaid sequence of events and the fact that the investigation in the matter is already complete, further detention of the applicant would not be necessary. Hence, a case is made out for grant of bail.

9.

O R D E R

(i) The application is allowed.

(ii) Applicant – Afsar Mohammad s/o. Mohammad Ali, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) each, with one solvent surety of the like amount, in connection with Crime No. 125 of 2023 registered with Umri Police Station, Dist. Nanded, for the offences punishable under Sections 363, 76(2)(N)(F)(J), 376(D) of IPC and Sections 4,6,8 and 12 of POCSO Act, 2012, on the following conditions :-

[a] The applicants shall not tamper with the prosecution evidence.

[b] The applicant shall attend each and every effective of trial before the trial court.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-