

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2613 OF 2022

Abid Salim Khan	...Applicant
Versus	
State Of Maharashtra and Anr.	...Respondents

Ms.Sana Shaikh a/w Ms. Maya U. a/w Anuradha Nigam, Pratik Thudani a/w Kusum Shah Advocate for Applicant.

Mr. A. A. Palkar APP for the Respondent-State.

Ms. Suman Mourya Advocate for Respondent No.2.

PSI Ravindra Jedhe, Govandi Police Station present.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 10th OCTOBER, 2023

P.C.:

1. By this application, applicant is seeking bail in Crime No. 165 of 2020 registered with Govandi Police Station, Mumbai for offences punishable under Sections 376, 376(2)N, 376(D), 323, 504, 506 read with 34 of the Indian Penal Code, 1860 and Sections 4, 8, 12, 17 of the Protection of Children from of Sexual Offences Act, 2012 and Sections 9, 10 and 11 of the Child Marriage Restraint Act.

2. It is prosecution's case that victim was forced to marry with applicant by her mother and father when she was minor. After marriage, applicant committed sexual intercourse with her.

Thereafter, applicant sexually assaulted the victim on several times. Thereafter, the applicant divorced the victim. The applicant took signature of the victim by threatening her on Talaknama. Hence, complaint was registered against the applicant.

3. It is the contention of learned counsel for the Applicant that mother and father of the victim had performed first marriage of victim when she was 15 years old. Thereafter, they have performed second marriage of victim with the applicant. In Nikahnama, the age of the victim was shown as 20 years. On that basis, the applicant performed marriage with the victim. Applicant was not aware of age of the victim at the time of marriage as she was below 18 years age. As a wife, he committed sexual intercourse with the victim. The applicant has been falsely implicated in this case. Applicant is behind bar more than three years. Hence, requested to allow the application.

4. It is the contention of learned APP that the victim was 17 years and 11 months old at the time of marriage with the applicant. Applicant sexually assaulted her on various occasions. There is prima facie case against the applicant. The applicant was aware that the victim was minor in spite that he performed marriage with her. Hence requested to reject the application.

5. Learned Counsel for Respondent No.2 reiterates the

submissions made by learned APP.

6. I have heard both the learned Counsels, perused the FIR and charge-sheet.

7. It is the contention of learned Counsel for the applicant that the victim was applicant's wife and mother and father of victim had performed marriage of victim with applicant and in the Nikahnama the age of the victim was shown as 20 years. The Nikahnama produced on record at page 46, translated copy shows that the age of the victim as 20 years. It appears that applicant had committed sexual intercourse with victim as a wife. Whether the applicant was aware about the age of the victim at the time of marriage or not is part of evidence. The applicant is behind bar more than three years. Investigation is completed and charge-sheet has been filed.

8. Considering the above facts, his further detention is not required. In view of above, I pass following order:

ORDER

(i) Applicant be enlarged on bail in Crime No. 165 of 2020 registered with Govandi Police Station, Mumbai, on executing PR bond in the sum of Rs. 30,000/- with one or two sureties in the like amount;

(ii) Applicant shall attend the concerned police station

once in a month i.e. on first Monday between 11.00 a.m. to 3:00 p.m. till framing of charge.

(iii) Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

(iv) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(v) The application is allowed in the aforesaid terms and is accordingly disposed off.

9. All concerned to act on the authenticated copy of this order.

[SHIVKUMAR DIGE, J.]