



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

BAIL APPLICATION NO.828 OF 2024

Kailas Baburao Ghandge,
Age: 34 years, Occu. Agriculture,
R/o. Adarash Nagar, Pathri,
Taluka Pathri, District Parbhani.

..Applicant

Versus

1. The State of Maharashtra,
through Police Station Officer,
Pathri Police Station, Pathri,
District Parbhani.

2. XYZ
(Separate Envelop is given)

..Respondents

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Mr. S. S. Rathi, Advocate for the Applicant.
Mr. A. S. Shinde, APP for Respondents-State.
Mr. R. J. Nirmal, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 28th JUNE 2024.

PRONOUNCED ON : 03rd JULY 2024.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.96/2023 registered with Pathri Police Station, Dist. Parbhani for the offences punishable under Sections 376(3), 377, 420, 465, 468, 470, 471 of the Indian Penal Code and Section 3, 4 & 17 of the Protection of Children from Sexual Offences Act, 2012 and Sections 9, 10 & 11 of the Prohibition of Child Marriage Act.

2. This is a successive Bail Application. Previously the applicant had approached this Court seeking regular bail vide Bail Application No.1501/2023. However, application was withdrawn

with liberty to move afresh after six months, if trial is not progressed.

3. Mr. Rathi, learned Advocate appearing for the applicant submits that the applicant has been arrested on 14.03.2023. The period of about 16 months is passed since the date of arrest. The trial is at nascent stage. Although charge is framed, the Investigating Officer failed to produce muddemal for last 4 to 5 months. There is no possibility that trial would conclude in recent future. Indefinite incarceration of accused would not be permissible since it violates rights of speedy trial guaranteed under Article 21 of the Constitution of India. He would submit that although charge-sheet is filed against in all 13 accused persons, applicant is only accused behind the bar. Mr. Rathi would further invite attention of this Court to the statement of parents of the victim to contend that no force was exerted by the applicant and with active participation of parents, applicant's marriage was performed with the victim. He invites attention of this Court to the copy of Aadhar Card depicting victim's date of birth as 22.08.2003. He would further invite attention of this Court to the birth certificate issued by Village Panchayat certifying victim to be born on 22.08.2003. He would, therefore, submit victim was major as on the date of marriage. False allegations are made regarding manipulation of the documents pertaining the age. Mr. Rathi would further submit that the applicant has no role in alleged manipulation of the documents. All such documents were prepared much before marriage and parents of the victim themselves got corrected Aadhar Card. Consequently, the applicant married with victim believing that she attained age of marriage. No fault can be found in the conduct of the applicant. Hence, he urges to release the applicant on bail.

4. Per contra, Mr. Shinde, learned APP and Mr. Nirmal, learned Advocate appearing for respondent no.2-victim vehemently opposes Bail Application contending that the victim was aged about 13 years and 6 months at the time of marriage. The applicant in connivance with other accused persons manipulated false documents, firstly the correction is carried in the original Aadhar Card based on false certificate of age. They invite attention of this Court to the statement of Mr. Tausif Khan Sardar Khan Pathan, who has updated Aadhar Card on the basis of birth certificate issued by the Village Panchayat produced by the parents of the victim. The attention of this Court is also invited to the statement of the victim recorded under Sections 161 and 164 of the Criminal Procedure Code, wherein she has stated about her correct age and also forcible sexual intercourse and unnatural act exerted against her by the applicant.

5. Having considered submissions advanced, it can be observed that Mrs. Rupali Rangari, Child Development Project Officer, Parbhani cum Child Marriage Prohibition Officer, on information received from Child Welfare Committee, Parbhani lodged FIR alleging that victim girl aged about 13 years and 6 months was married on 02.12.2022 with the applicant who is aged about 40 years and presently victim is residing with her parents. After enquiring into information, she confirmed that it is a case of child marriage, performed by accused persons, in connivance with each other and also a case of manipulation of record as regards to victim's age. Consequently, FIR in Crime No.96/2023 was registered with Pathri Police Station, Parbhani for offence punishable under Prohibition of Child Marriage Act, 2006, the Protection Of Children from Sexual Offences Act, 2012 and Indian Penal Code.

6. After due investigation, charge-sheet has been filed against the applicant and 13 others. During the course of investigation, the statement of victim is recorded under Section 161, wherein she categorically states about her age as 13 years as on the date of marriage i.e. 02.12.2022. The statement discloses that certain amount was exchanged towards dowry and gifts. The middle woman Laxmibai was paid amount of Rs.10,000/- by the applicant. During the stay of the victim with the applicant, she was subjected to forcible sexual intercourse and unnatural act. The contents of the FIR depicts that minor victim was subjected to marriage in well planned manner. To conceal her age, a false birth certificate was procured and Aadhaar Card was updated using such documents to make a show that she attained age of marriage. However, the school admission record of the victim at Gyanaba More Prathamik Vidyalaya stipulates her birth date as 22.08.2009. Accordingly, victim's age at the time of marriage was less than 14 years. The victim is consistent in her statements recorded u/s 161 and 164 regards to the manner in which her marriage was performed and sexual victimization after marriage. In fact, this appears to be a serious case of child marriage, the rape and offences under POCSO. The applicant, who is middle aged man of almost 34 years, capitalized on poverty of the victim's parents and subjected her to inhuman sexual abuse. It is true that the medical examination report for sexual assault do not show much injuries on the private parts of the victim, but it would be irrelevant, as victim was residing with her parents for more than three months prior to her medical examination.

7. Consequently, no case is made for grant of regular bail. However, it would be in the fitness of things to direct the learned Sessions Judge/Special Court to expedite the trial and endeavour

to conclude same within a period of nine (09) months from the date of this order.

8. It is made clear that the observations herein above are based on *prima facie* consideration of the material in charge-sheet, only for disposal of this application and shall not influence Trial Court.

9. In view of the aforesaid observations, Bail Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE