



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**953 ANTICIPATORY BAIL APPLICATION NO. 862 OF 2024**

1. Ashish Vasant Rathod
2. Vasant Chandu Rathod
3. Sangita Vasant Rathod
4. Raju Raysing Chavan
5. Anita Raju Cahvan

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
2. The Investigation Officer
3. XYZ, the victim

..RESPONDENTS

...  
Advocate for Applicants : Mr. Shinde Dhananjay M.  
APP for Respondent/State: Ms.M.L. Sangit  
Advocate for respondent no. 3 : Mr. Chaitanya Deshpande

...  
CORAM : **SHIVKUMAR DIGE, J.**  
DATE : 4<sup>th</sup> July, 2024.

**P.C.:**

1. The applicants apprehend arrest in connection with FIR No.189 of 2024 registered with Akhada Balapur Police Station, Dist. Hingoli, for the offence punishable under sections 376, 376(2)(N) of the Indian Penal Code (For short, "IPC"), sections 3, 4, 5(L), 5(J)(2), 6 of the POCSO Act and sections 9, 10, 11 of the Child Marriage Restrain Act, 2006.

2. It is prosecution's case that on 26<sup>th</sup> March, 2024, the informant Police Inspector lodged a complaint against all the applicants at Sinhgad Police Station, Dist. Pune. Thereafter, F.I.R. came to be transferred to Akhada Balapur Police Station, Dist. Hingoli. The

informant is working in Smt. Kashibai Navle Hospital, Pune as a gynecologist. On 26<sup>th</sup> March, 2024, she examined the victim. It was the complaint of the victim that she has no menstrual period since last one and half month. Her urine pregnancy test was positive. The victim disclosed her age as 18 years, 7 months old but the informant realized that she is less than 18 years. She demanded Aadhar Card. From the said card, it appeared that the victim is 14 years, 05 months and 02 days old. The informant examined her and found that victim was pregnant. During inquiry, victim disclosed that her marriage was performed with applicant no.1 with the consent of applicant nos.2 to 5. After marriage, she lived with applicant no.1 and applicant no.1 performed sexual intercourse with her. Due to that sexual intercourse, she got pregnant. The informant lodged the report to the police and on that basis, the police registered offence against the applicants. The applicant nos.2 and 3 are the mother and father of applicant no.1 and applicant nos.4 and 5 are the mother and father of the victim. The allegations against them are that they have performed the marriage of minor.

3. It is contention of learned counsel for the applicants that the statement of the victim has not been recorded by the police regarding sexual intercourse with applicant no.1. First information report is lodged by doctor when victim had gone for medical check-up. The victim has not stated about sexual assault on her by applicant no.1.

She has stated that she had physical relations with applicant no.1 after marriage. The learned counsel further submitted that the police has not recorded the statement of victim nor her statement under section 164 of the Criminal Procedure Code is recorded to show the involvement of applicant no.1 in the said offence, hence requested to allow the application.

4. It is contention of learned APP that at the time of pregnancy, the age of victim was below 15 years. The marriage of victim was performed with applicant no.1 with the consent of applicant nos.2 to 5. The applicants were aware that at the time of marriage, the victim was minor. In spite of that the said marriage was performed. The victim has stated before the informant that applicant no.1 had physical relations with the victim and due to that physical relations, the victim got pregnancy. The consent of the victim is immaterial. Custodial interrogation of the applicants is required, hence requested to reject the application.

5. It is contention of learned counsel for respondent no.3 that the victim is legally wedded wife of the applicant and the victim has no objection to allow the application.

6. I have heard all the learned counsel. Perused the F.I.R. and police papers produced on record.

7. The complaint is filed by the doctor, who examined the victim. Though in F.I.R. it is alleged that the victim had told before the first

informant that she married with applicant no.1 and after marriage, there was physical relations between her and applicant no.1, but police has not recorded the statement of the victim about her physical relations with applicant no.1. Nor statement of the victim under section 164 of the Criminal Procedure Code is recorded. So it does not appear that applicant no.1 sexually assaulted the victim. Considering these facts, the custodial interrogation of the applicants is not required, hence I pass the following order :-

**ORDER**

- (i) The application is allowed.
- (ii) In the event of arrest of the applicants in connection with FIR No.189 of 2024 registered with Akhada Balapur Police Station, Dist. Hingoli, for the offence punishable under sections 376, 376(2)(N) of the Indian Penal Code (For short, "IPC"), sections 3, 4, 5(L), 5(J)(2), 6 of the POCSO Act and sections 9, 10, 11 of the Child Marriage Restrain Act, 2006, the applicants be released on executing personal bond in the sum of Rs.15,000/- each with one surety of the like amount by each of them, on the following conditions :-
  - (a) the applicants shall attend the concerned police station as and when required by the Investigating Officer.

**[ SHIVKUMAR DIGE, J. ]**