



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 BAIL APPLICATION NO. 2042 OF 2024

SHIVAJI S/O. SAKHARAM DEVKATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Ramankumar Gopal
Dodiya i/b Mr. Devang Deshmukh, Advocate for the applicant
Mr. S. B. Jadhav, APP for the respondent/State
Ms. R. S. Kulkarni, Advocate for the informant

CORAM : R. M. JOSHI, J.

DATE : 18th DECEMBER, 2024

PER COURT :-

1. Applicant is seeking regular bail in connection with Crime No. 196/2024, registered with Himayatnagar Police Station, District Nanded for the offences punishable under Sections 376 r/w 34 of the Indian Penal Code, Sections 4 & 6 of the The Protection of Children from Sexual Offences Act (POCSO) and Sections 9, 10 and 11 of Prohibition of Child Marriage Act.

2. The first informant is the minor girl. She claims that she was forcibly married to the present applicant against her will by her parents and relatives. There is also allegation that the applicant established physical relations with her against her will. Because of the same she went to back to her parental home on 16/06/2024. As her parents were

forcing her to go to the applicant, she came to the police station on 01/08/2024 and lodged report.

3. Learned Senior counsel for the applicant submits that the investigation into the crime is over with filing of the charge-sheet. He drew attention of the Court to the Crime No. 292/2023 registered with Narayanguda Police Station, Hyderabad i.e. the report lodged by the maternal uncle of the informant. He drew attention of the Court to the statement of the informant herein which according to him indicates that the informant is having affair with some boy and as such this report is filed. It is his submission that after the conclusion of the investigation and filing of the report, his further custody is not necessary.

4. Learned APP opposed the application by citing seriousness of the crime. Learned counsel appearing for the victim/informant submitted that the victim does not wish to join the company of her parents. It is in fact alleged by her that the parents after seeking interim relief from this Court have approach the parents of the informant had been to the juvenile home where she is kept and they coerced her. She has apprehension that the parents may force her to join the company of applicant herein. Learned counsel for the informant submitted that merely because report under Section 164 of Cr.P.C. no statement is made showing establishment of physical relations, that does not become sole

ground for grant of bail. Learned counsel for the informant also pointed out the order passed by the learned Sessions Judge and the observations made in this regard.

5. The allegations made by the informant is in respect of the physical relations established by the applicant with her against her will and though she is a minor. As against this, the statement recorded before the Magistrate indicates that as per her own say applicant did not have knowledge about she being minor. Moreover, she does not claim any physical relationship established with him. At this stage it would be not permissible for this Court to keep the said statement out of consideration for the reason that the statement recorded before the Magistrate. This statement will have to be given more weightage over the statement recorded by the Police. Needless to say that the fate of the said statement would be decided during trial. Suffice is to say that at this stage there is some material to indicate the possible innocence of the applicant. Since, charge-sheet is filed. Applicant has no criminal history behind him. He is not likely to flee from justice by imposing appropriate conditions which can be enlarged on bail. Hence, the following order.

ORDER

- i) The application is allowed.
- ii) Applicant in connection with Crime No. 196/2024, registered with Himayatnagar Police Station, District Nanded for the offences

punishable under Sections 376 r/w 34 of the Indian Penal Code, Sections 4 & 6 of the The Protection of Children from Sexual Offences Act (POCSO) and Sections 9, 10 and 11 of Prohibition of Child Marriage Act, he be released on bail, on furnishing PB and SB of Rs.25,000/-, with one solvent surety of the like amount, on the conditions that,

(a) He should not tamper with the prosecution witnesses.

(b) He is strictly prohibited from contacting the informant directly, indirectly, personally, via phone or even on social medial i.e. in any manner whatsoever. In case, if it is found that any such contact has been established, the same shall become ground for cancellation of bail forthwith.

(R. M. JOSHI, J.)

ssp