

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1349 OF 2024

Mhalappa Hvnmane @ Vhanmane
Ratnabai Mhalappa @ Malappa Vhanmane
Saguna Baburao Waghmode ... Applicants
Vs.
State of Maharashtra and another ... Respondents

Mr. Vikrant V. Phatate for Applicants.
Ms. Rutuja A. Ambekar, APP for Respondent No.1.
Ms. Dhruti Kapadia (Legal Aid Counsel) for Respondent No.2.
Mr. A. U. Karpe, PSI a/w. Mr. A. V. More, Head Constable, Mandrup Police Station, Solapur (Rural).

CORAM : MANISH PITALE, J.
DATE : JULY 02, 2024

P.C. :

. Heard Mr. Phatate, learned counsel appearing for the applicants, Ms. Ambekar, learned APP appearing for the respondent-State and Ms. Kapadia, learned counsel appearing on behalf of the respondent No.2 (informant - victim).

2. In the present case, the applicants are apprehending arrest in connection with FIR No.0008 of 2024 dated 07.01.2024 registered in Mandrup Police Station, District - Solapur Rural, for offences under Sections 323, 324, 376(2)(n), 376(2)(j), 376(3), 506 read with Section 34 of the Indian Penal Code, 1860 (IPC) as also under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 9 and 11 of the Prohibition of Child Marriage Act, 2006.

3. There are, in all, five accused persons of whom three are

applicants in the present application.

4. The informant in her statement has described in detail how her maternal uncle i.e. applicant No.1 proposed her marriage with his son, even when the informant was hardly 12 years old in the year 2019. The statement further describes that the marriage was solemnized on 26.06.2019, when the applicants were present and they participated in the said marriage.

5. Accused No.1 is the son of applicant No.1 with whom the marriage of the informant was solemnized. It is stated that thereafter in September 2023, the accused No.1 visited the informant and committed forcible sexual intercourse and that such incidents continued. On 02.01.2024 also, such an incident happened and eventually, with the assistance of a teacher in the school of the informant, the police was informed, which ultimately led to registration of the FIR. This Court is informed that accused No.1 was arrested and he has been released on regular bail.

6. The learned counsel for the applicants submits that the material on record merely shows that the applicants were present when the marriage was solemnized and although it could be said to be in the teeth of the provisions of the Prohibition of Child Marriage Act, 2006, ingredients of the offences cannot be said to be made out.

7. On the other hand, learned APP and the learned counsel appearing for respondent No.2 have vehemently opposed the prayers made in the present application. It is submitted that the applicant No.1 proposed the aforesaid marriage and applicant Nos.2 and 3 supported the same, thereby indicating that the ingredients of the offences under the provisions of the Prohibition of Child Marriage Act, 2006, are clearly made out.

8. This Court has perused the material on record. The offences registered in the present case are indeed serious in nature but at this stage, the offences pertaining to the IPC and the provisions of the POCSO Act appear to be mainly concerned with the acts of accused No.1 i.e. a person who married the informant although she was a minor and in fact a child only about 12 years of age. The allegations made by the informant, in the opinion of this Court, do make out the ingredients of the offence under Section 11 of the Prohibition of Child Marriage Act, 2006 as against the applicants. The punishment for the said offence is rigorous imprisonment for upto two years and fine, which may extend to Rs.1,00,000/-. Section 15 of the Prohibition of Child Marriage Act, 2006, specifies that the offences under the said Act are cognizable and non-bailable.

9. Although this Court disagrees with the submissions made on behalf of the applicants that the ingredients of the offence under Section 11 of the Prohibition of Child Marriage Act, 2006 are not made out, a crucial question, in the present case, would be as to why the custody of the applicants is required, so long as they are ready to co-operate with the investigation. It is relevant that the accused No.1 has been granted regular bail. It cannot be ignored that the applicant No.3 is the mother of the informant and the applicant Nos.1 and 2 are her maternal uncle and aunt.

10. This Court is of the opinion that upon imposing appropriate conditions, the applicants can be granted relief, so long as they co-operate with the investigation.

11. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicants are arrested in connection with FIR No.0008 of 2024 dated 07.01.2024 registered in

Mandrup Police Station, District - Solapur Rural, they shall be released on bail on furnishing PR Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one or two sureties in the like amount;

- B. The applicants shall remain present before the investigating officer on 04.07.2024 and 05.07.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. They shall co-operate with the investigation;
- C. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

12. In case any of the aforesaid conditions are violated, the present order would be liable to be cancelled.

13. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab