

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

ANTICIPATORY BAIL APPLICATION NO. 3184 OF 2024

Yogesh @ Appa Bharat Bhakare	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Vaibhav V. Ugle i/by Shubham Vasekar for the Applicant.
Ms. Megha S. Bajoria, APP for Respondent No.1-State.
Mr. Aslam S. Patel, Police Constable, Barshi Taluka Police Station.

CORAM: MANISH PITALE, J.
DATE : 29th NOVEMBER 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant in the present case is apprehending arrest in connection with FIR No. 0193 of 2024 dated 21st June 2024 registered at Barshi Taluka Police Station, Dist. Solapur, for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Upon completion of investigation and filing of charge-sheet, the accused persons are additionally facing prosecution for offences under Sections 366A and 376 of the IPC, as also Sections 4, 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006.

3. The FIR in the present case was registered at the behest of the father of the victim. It was stated that the victim being 13 years and 8 months old was taken from her school by the applicant herein, on the date and time of the incident. Thereafter, she was married of to co-accused person, in the presence of other accused persons and in that backdrop, the offences have been registered against the accused persons, including the applicant.

4. The learned counsel for the applicant submits that although serious offences under the POCSO Act have been registered in the present case and there is also an offence concerning rape of minor girl, the role attributed to the applicant would show that such offences cannot be invoked in the context of the applicant. It is submitted that even if the role attributed to the applicant in the charge-sheet is taken into account, as the applicant is ready to cooperate with the investigation, this Court may consider allowing the application.

5. On the other hand, the learned APP vehemently opposed the present application, submitting that indulgence may not be shown to the applicant, who is one of the accused persons responsible for the minor girl aged 13 years and 8 months being kidnapped and married in the teeth of provisions of the Prohibition of Child Marriage Act. It is submitted that the role of the applicant is crucial because he took the victim from her school to the place where the marriage was eventually performed. Reference was made to provision of the POCSO Act, which defines abetment and

punishment for abetment of offence under the POCSO Act.

6. This Court has considered the rival submissions in the light of the material placed on record. The application deserves to be allowed, for the following reasons :

- (a) The role of the applicant, at worst, can be appreciated in the context of the minor girl being taken away from the school, *prima facie* amounting to kidnapping and thereafter, presence of the applicant at the time of the marriage, which gives rise to the offence under the Prohibition of Child Marriage Act. The angle of abetment of offences under the POCSO being committed, would crucially depend upon the statement of the victim. In any case, there is no direct allegation pertaining to either rape or sexual assault against the applicant.
- (b) This Court has perused the statement of the victim recorded during the course of investigation, as also her sworn statement before the Magistrate recorded on 4th July 2024 under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). While in the statement recorded during the course of investigation, amongst other things, the victim has stated that after the marriage was performed, the co-accused person who married her, had forcible sexual intercourse with her, but, in the aforesaid statement of the victim recorded under Section 183 of the BNSS, there is no

specific allegation of sexual intercourse, much less forcible sexual intercourse inflicted upon the victim. It is submitted that while the co-accused, who married her, made an attempt to have sexual intercourse with the victim, but when she resisted, the co-accused person went away. This is crucial, even while assessing the allegation of abetment under the POCSO Act made against the applicant herein. In the face of the contents of the statement recorded under Section 183 of the BNSS, this Court is inclined to favourably consider the present application.

- (c) It is crucial to note that offence under Section 363 of the IPC pertaining to kidnapping, is bailable. The offence under the Prohibition of Child Marriage Act, would show that offence under Section 9 thereto, on the face of it, is not applicable as regards the applicant, while offence under Section 10 of the Prohibition of Child Marriage Act, would be relevant because it pertains to abetment of child marriage. But, the said offence prescribes punishment only to the extent of upto 2 years. In this situation, it is evident that even if material available on record along with the charge-sheet is taken into account, the applicant has made out a case in this application in his favour.
- (d) It is also relevant to note that two co-accused persons, who were also alleged to be present at the time when the child marriage was performed, were granted anticipatory bail by

the Sessions Court by order dated 16th August 2024.

- (e) The applicant has undertaken to cooperate with the investigation and therefore, this Court is inclined to allow the application.

7. For the above reasons, the application is allowed in the following terms :

- (a) In the event the applicant is arrested in connection with FIR No. 0193 of 2024 dated 21st June 2024 registered at Barshi Taluka Police Station, Dist. Solapur, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount.

- (b) The applicant shall remain present before the Investigating Officer on 2nd and 3rd December 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer. The applicant shall cooperate with the investigation.

- (c) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the

observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

9. The application is disposed of.

MANISH PITALE, J.