

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

CRIMINAL BAIL APPLICATION NO. 2095 OF 2023

Reshmabai Shivaji Shinde

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Aniket Vagal a/w Mr. Divesh Mehani, Advocate/s for the Applicant.

Mr. Rajiv Patil, Senior Advocate - *Amicus Curiae*.

Ms. Veera Shinde, APP for Respondent- State.

P.C. Gajanan Devidas Kasar, B.No.1597, Vadner-Khakurdi Police Station, Nasik Rural, present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 16th February 2024

P. C.

1. Heard Mr. Rajiv Patil, learned Senior Counsel, who has been appointed as *Amicus Curiae* to assist the Court, Mr. Aniket Vagal a/w Mr. Divesh Mehani, learned Counsel appearing for the Applicant and Ms. Shinde, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1. C.R. No.	158 of 2021
2. Date of registration of F.I.R.	6th April 2021
3. Name of Police Station	Wadner Khakurdi, District-Nashik.

4. Section/s invoked	376 (2)(j), 376 (2)(k), 376(3) r/w 34 of <i>Indian Penal Code, 1860</i> ; 4,6,8 and 12 of <i>POCSO Act, 2012</i> , 9,10 and 11 of the <i>Prohibition of Child Marriage Act, 2006</i> .
5. Date of incident	2017 to 2020
6. Date of arrest	13th April 2021
7. Date of filing Charge-sheet	4th June 2021

3. The prosecution case is that the Complainant is the daughter of Accused No.1 and is the victim herself, who on the date of registration of offence i.e. on 9th April 2021 was aged 17 years 3 months and 17 days. The allegations made by the Complainant/Victim is that on 21st November 2017, her mother-Reshmabai Shivaji Shinde i.e. Accused No.1 got her married to one Kishore Mothabhai Bachhao and her mother took Rs.1,00,000/- from said Kishore Bachhao. Thereafter the victim got separated from her husband at the instance of Accused No.1. According to the Victim, her mother i.e. Accused No.1 got her married for the second time with one Walmik Dnyaneshwar Patil and this time she took Rs.1,20,000/- from said Walmik Patil. Thereafter her mother-Accused No.1 got her married for a third time with one Sandeep Ananda Patil on 25th April 2020 for which she took Rs.1,60,000/- from said Sandeep Patil. Thereafter the

victim on 28th March 2021 had a quarrel with her then husband i.e. Sandeep Patil and thereafter she returned to her parent's residence at Rawalgaon. At that time, her mother i.e. Accused No.1 told the victim to get separated from the husband and that she would get her married with a person from the *Marwari* community. At that time, the victim had a quarrel with her mother-Accused No.1 and then she lodged a complaint on a child helpline portal. The victim thereafter went to the Police Station along with her grandfather and lodged her complaint against her mother-Reshmabai Shivaji Shinde i.e. Accused No.1, her brother - Nitin Shivaji Shinde i.e. Accused No.2, Alkabai Valmik Madvade i.e. Accused No.3, Yogesh Daulat Wagh i.e. Accused No.4, Sandeep Ananda Patil i.e. Accused No.5, Ananda Maharuru Patil i.e. Accused No.6, Deepak Ananda Patil i.e. Accused No.7 and Vaishali Deepak Patil i.e. Accused No.8. Hence, the F.I.R. was lodged.

4. Learned Counsel appearing for the Applicant submitted that the Applicant has been arrested on 13th April 2021 and thereafter Charge-sheet has been filed on 4th June 2021. Till date, the trial has not concluded and therefore, the Applicant be released on bail. He further submitted that there are total 10 accused persons, out of which 7 have been released on bail. The Applicant is a woman and therefore, she be released on bail.

5. On the other hand, Ms. Shinde, learned APP has opposed the Bail Application. She submitted that the offence is serious in nature and that if the Applicant is released on bail, she may influence the witnesses. As the offence is very serious and it is the allegation that the Accused No.1 i.e. mother of the victim forcefully got her married to three persons one after another and in lieu of which, she accepted consideration from said persons. She therefore submitted that the Bail Application be rejected.

6. The present offence was registered on 6th April 2021 when the age of the victim was around 17 years. The Applicant forcefully got the victim married to said Kishore Bachhao and accepted a consideration of Rs.1,00,000/- when the victim was only 12 years old. Thereafter, at the instance of Accused No.1, the victim got separated from said Kishore Bachhao and the Applicant got her married for the second time to one Walmik Patil and accepted a consideration of Rs.1,20,000/- and thereafter again the Applicant got the victim married for a third time with one Sandeep Patil and on 25th April 2020, she accepted a consideration of Rs.1,20,000/- from him.

7. The offence was registered on 6th April 2021, when the Applicant prepared a plan to get the victim married again with a person from the *Marwari* community and therefore the offence has been registered.

8. As the victim has been sexually assaulted since the age of 12 years, she will require rehabilitation as well as psychological care and therefore this Court, by Order dated 19th January 2024 appointed Mr. Rajiv Patil, learned Senior Counsel as *Amicus Curiae* to suggest the remedial measures and also directed the Secretary, Maharashtra State Legal Services Authority, Mumbai / The Secretary, High Court Legal Services Committee, Mumbai to appoint two Para-Legal Volunteers to visit the Respondent No.2 and submit the report to this Court by next date. However, it appears that the victim could not be found. In fact, by Order dated 1st February 2024, this Court has recorded the valuable suggestions made by learned *Amicus Curiae* that the Para-Legal Volunteers be also requested to take help of the local Senior Psychologist.

9. Learned *Amicus Curiae* was appointed for the purpose of making suggestions regarding the rehabilitation of the victim, however, the Victim could not be located. The Secretary of High Court Legal Services Committee, Mumbai has submitted report dated 14th February 2024 to this Court. Paragraph nos.4 and 5 of the said report are as under:

"4. In the light of reports submitted by the Learned Secretary, DLSA, Nashik and DLSA, Jalgaon, (through TLSA Chalisgaon) as the complainant/ victim was not found available at the respective places, no enquiry

with the complainant/victim could be conducted at the hands of appointed Para Legal Volunteers.

5. The Learned Secretary, DLSA, Nashik has further reported that, Police Station Wadner, Khakurdi has submitted a proposal for grant of compensation under Manodhairya Scheme on 24/01/2024 for the complainant. The said proposal is likely to be placed before the Committed for consideration in short period of time."

10. As the Victim could not be found at the respective place, no inquiry could be made and assistance could not be provided to her for rehabilitation. However, it is to be noted that paragraph no.5 of the report of the High Court Legal Services Committee, Mumbai records that the proposal for grant of compensation under '*Manodhairya Scheme*' is pending and the said proposal is likely to be placed before the Committee for consideration in a short period of time. Thus, it appears that the Authorities are taking steps as per law to get the victim rehabilitated.

11. It is significant to note that on 14th February 2024, the victim sent a Whatsapp message to P.C., Gajanan Devidas Kasar, B.No.1597, Vadner-Khakurdi Police Station, Nashik Rural. As per said message, the victim has stated that she is residing with her husband Walmik Patil, mother-in-law and son of 1.5 years and that she is pregnant. In the statement, she has stated that the husband is a driver and that he is earning monthly income.

12. As far as the merits of the Bail Application are concerned, the Applicant was arrested on 13th April 2021 and she is in custody for almost 3 years. As per the Charge-sheet, there are about 31 witnesses proposed to be examined by the prosecution. As far as the stage of the trial is concerned, the Charge is framed and Witness summons has been sent to P.W.-1, however, Charge-sheet shows that about 31 witnesses are proposed to be examined by the prosecution. Therefore, the trial is likely to take a considerably long time.

13. Statement of the victim under Section 164 of the *Code of Criminal Procedure, 1973* has also been recorded, the same prima facie do not show involvement of the Applicant in the crime.

14. The Applicant does not have any criminal antecedents.

15. The Applicant does not appear to be at risk of flight.

16. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

17. In view thereof, the following order:-

ORDER

(a) The Applicant- Reshmabai Shivaji Shinde be released on bail in connection with C.R. No.158 of 2021 registered with the Wadner Khakurdi Police Station, District- Nashik on

her furnishing P. R. Bond of Rs.25,000/- with one or two sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish her cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(c) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(d) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witness in any manner.

(e) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(f) The Applicant shall surrender her passport, if any, to the Investigating Officer.

18. The Bail Application is disposed of accordingly.

19. It is clarified that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits

and uninfluenced by the observations made in this Order.

20. This Court places on record its appreciation for the valuable assistance rendered by Mr. Rajiv Patil, the learned *Amicus Curiae*.

BHALCHANDRA
GOPAL
DUSANE

[MADHAV J. JAMDAR, J.]

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