

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 837 OF 2024**

Rejabul Jalaluddin Shaikh	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. A. S. Sayyed for applicant.

Mr. Mayur S. Sonavane, APP for respondent No.1-State.

Mr. Rohan S. Sawant for respondent No.2.

Mr. Sunil Gomare, PSI, Amboli Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 09th OCTOBER, 2024**

P.C. :

1. Heard learned counsel for the applicant, the learned APP for the respondent No.1-State as well as the learned counsel appointed to appear on behalf of respondent No.2.

2. In the present case, the FIR is being registered on the statement of a police officer, who found that the victim in the present case, was married to the applicant, when she was still a minor. The marriage took place on 08.01.2021, while the date of birth of the victim is claimed to be 20.07.2007 (as recorded in the order of the Sessions Court). The applicant is the husband of the victim and the mother of the victim is a co-accused person.

3. On the statement of the police officer, the aforesaid FIR bearing No.0678 of 2023 dated 07.09.2023 was registered at Amboli Police Station, Mumbai, for offences under Sections 376 and 376(2)(n) of the Indian Penal

Code, 1860; Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006. The applicant was arrested on 07.09.2023 and he has remained behind bars since then.

4. The learned counsel for the applicant submitted that this is a case of arranged marriage and in the document at page Nos.24-25, which records the facts pertaining to the said marriage (*Nikah*), the age of the victim is recorded as 18 years. The aforesaid information about the victim was filled by the mother of the victim, who is a co-accused person. The victim as well as her mother have signed on the said document. On this basis, it is claimed that the applicant ought not to be hauled up for contracting marriage with the victim, who was still a minor and yet to attain the age of majority.

5. It is indicated that the FIR has been registered in the backdrop of a matrimonial discord between the applicant and the victim. It was when the victim approached the authorities to raise grievance under the provisions of the Protection of Women from Domestic Violence Act, 2005, that the FIR in the present case was registered. It is submitted that there is a son born from the wedlock on 09.10.2021. The applicant has already suffered incarceration for more than 1 year. The charge is yet to be framed and no purpose would be served by continuing judicial custody of the applicant. It is submitted that the applicant is not a hardened criminal and he has no criminal antecedents. It is further submitted that the applicant is ready to abide by the conditions that may be imposed by this Court.

6. On the other hand, the learned APP as well as the learned counsel appearing on behalf of respondent No.2 have opposed the present

application. It is submitted that the victim in the present case was obviously minor on the date of marriage. This could be said to be within the knowledge of the applicant. Therefore, he is entirely responsible for registration of aforesaid offences against him. The learned counsel appointed to appear on behalf of respondent No.2 also indicated that the *Kazi* ought to have verified the age of the victim at the time of marriage and having failed to do so, wrong facts have been recorded in the documents at page Nos.24-25. It was submitted that the material on record sufficiently makes out the ingredients of all the offences registered against the applicant and therefore, no indulgence may be shown to the applicant.

7. A perusal of the material on record shows that the offences in the present case, concerning rape and penetrative sexual assault, have been registered against the applicant, essentially because there is *prima facie* material to show that at the time of marriage, the victim was minor. This is not a case where allegations of forcible sexual assault and rape are made out against the applicant, on the basis that he forced himself on the victim, who was a minor. There is material on record to show that after marriage, a child was born on 09.10.2021. But, there was matrimonial discord between the applicant and the victim, which ultimately led to the information received by the police officer, whose statement has led to registration of FIR.

8. The document at page Nos.24-25 dated 08.01.2021, which records the factum of marriage between the parties, shows that the age of the victim is shown to be 18 years. The said document is signed by the victim as well as her mother. It is the case of the applicant that the marriage was an arranged marriage and that he proceeded on the basis of the information provided by the victim and her mother. Hence, it could be said that the applicant has

made out a *prima facie* case in his favour, to contend that he married the victim on the basis of representations made to him with regard to the age of the victim. That the applicant should have been more cautious in ascertaining the age of the victim, is a different matter. But, the aforesaid document on record does indicate that the victim was shown to be 18 years old at the time of marriage. The said document is signed by the victim as well as her mother.

9. In this situation, when the charge is yet to be framed and the trial will take considerable period of time, this Court is of the opinion that no fruitful purpose would be served by continuing the judicial custody of the applicant. His languishing in jail would not be justified in the light of the aforesaid material brought to the notice of this Court. So long as the applicant co-operates with the expeditious disposal of the trial and strict conditions are imposed upon him to ensure the safety of the victim, the present application can be allowed.

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

- (i) The applicant shall be released on bail in connection with FIR No.0678 of 2023 dated 07.09.2023, registered at Amboli Police Station, Mumbai, on furnishing PR Bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant shall not enter the jurisdiction of Amboli Police Station, during the pendency of the trial.
- (iii) The applicant, upon being released on bail, shall report to Versova Police Station on first Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.

- (iv) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial court about his contact number and residential address and update the same in case of any change;
- (v) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted.
- (vi) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence or threaten the informant, witnesses and other persons concerned with the case.

11. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

12. It is also clarified that the observations made in this order are limited to the disposal of the present application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli