

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2369 OF 2024

Asad Ayub Shaikh

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Ms. Anjali Patil a/w. Mr. Tohid Shaikh, Advocates for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent – State of Maharashtra.
- Mr. Vikas A. Tiwari, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2025

P.C.:

1. Heard Ms. Patil, learned Advocate for Applicant; Ms. Bajoria, learned APP for Respondent – State of Maharashtra and Mr. Tiwari, learned Advocate for Respondent No.2.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short ‘**Cr.P.C.**’) seeking Bail in connection with First Information Report No.46 of 2024 (for short ‘**FIR**’) registered with Powai Police Station for offences punishable under Section 376(2)(n) read with Section 34 of the Indian Penal Code, 1860 (for short ‘**IPC**’) alongwith Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘**POCSO**’) alongwith Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 and 66(E) of Information Technology Act, 2000.

3. Applicant is husband whereas First Informant – Complainant is wife. On the date of marriage between the parties, First Informant was 17 years and 7 months old. She has stated that she knew the Applicant two years prior to the filing of said complaint when she was in 10th standard and had befriended the Applicant on Instagram App since he was residing in the same area and he had pursued and wooed her at that time. Both of them started chatting and meeting each other regularly thereafter. She has stated that her family members came to know about her meeting the Applicant frequently and they therefore immediately confronted Applicant and also visited the house of Applicant and had met with Applicant's parents. Thereafter she has stated that family of Applicant and Complainant decided that they should get married if they wish to be with each other for the rest of their life and accordingly their marriage was fixed and culminated by consent of both families.

4. One of the submission advanced by Ms. Bajoria, learned APP is that Applicant was under-age at the time of marriage and it was incongruous and illegal on the part of parents of both parties to have agreed to marriage because marriage was conducted on 20.11.2023 with consent of both the parties. Post-marriage, First Informant started residing with Applicant's family and within one month's time she realised that Applicant was in contact with one other girl residing in their area whom he had befriended some time ago prior to their

marriage. One month after the marriage maternal aunt of First Informant took her to hospital for treatment and the medical report thereof is placed on record which states that there were certain bite-marks on the body of First Informant. Though it is alleged and stated in the complaint that post-marriage whenever First Informant confronted Applicant about details and whereabouts of the girl with whom Applicant had any relationship, Applicant would beat her and abuse her physically. However save and except the said allegation there is no other record which would corroborate and justify the said allegation. That apart, other allegation in First Information Report with respect to Applicant was about he having certain compromising photographs and videos which has been taken care of by the Investigating machinery. The mobile phone as also, the said videos are in the safe custody of the Investigating Officer.

5. Ms. Bajoria, learned APP has vehemently submitted that statement recorded under Section 164 of Cr.P.C. is in conformity with what First Informant has stated in the FIR and thereafter today Respondent No.2 – First Informant contends that she is ready and willing to go back to stay with the Applicant should not be considered as a mitigating factor by this Court because First Informant was minor at the time of the incident. She has also referred to and relied upon decision of the Supreme Court in the case of ***Satish Kumar Jayantilal***

*Dabgar V/s. State of Gujarat*¹ which states that consent of prosecutrix in such cases where she is minor is immaterial and cannot be considered as a mitigating circumstance.

6. I have heard Ms. Patil, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – the State of Maharashtra and perused the records of the case.

7. *Prima facie*, it is seen though First Informant was not a major on the date of marriage as also, from the date and tenure of the incident which is alleged she cannot be said to be naive since she precisely knew the consequences of her own actions. Marriage of parties was fixed by their families after their consent and First Informant willingly agreed for the marriage. FIR itself clearly narrates that she knew the Applicant since she was in the 10th standard as also, the fact that Applicant's family had the business of sale of eggs (shop) in the said area. The statement in the FIR with respect to marriage between parties as also expenditure incurred on the marriage is stated by First Informant herself which goes to show that she consented to the marriage despite being little below 18 years. Further, in view of the fact that alleged compromising photographs and videos as also instrument having been recovered and also the other co-Accused i.e. both parents of the First Informant and her uncle having granted Anticipatory Bail by Sessions Court, further custody of Applicant is not

¹ Criminal Appeal No(s).230 of 2013 decided on 10.03.2015 : 2015 CRI.L.J.1959.

required. Applicant is released on bail subject to following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or charge of residence or

mobile details, if any, from time to time;

(vi) Any infraction of the above conditions shall entail
the prosecution to seek cancellation of this order.

8. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

9. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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