

Spl.(POCSO) Case No.202/2022
State Vs.Mayur Krushna Bhavsar
CNR No.MHNS010051102022

ORDER BELOW EXH. 2

1. Perused application and say. Heard ld. advocate for the applicant, ld. APP for the State and the informant.

2. The present application has been filed by the applicant/accused No.1 Mayur Krushna Bhavsar (Hereinafter referred to as 'the applicant' for the sake of brevity) for bail under Section 439 Cr.P.C. in C.R.No.216/2022 of Bhadrakali Police Station. He has been charged with the offences punishable under Sections 305, 306, 498-A r.w. 34 of the Indian Penal Code, 1860, under Section 4, 8, 12 17 of the Protection of Children from Sexual Offences Act, 2012 and under Section 9 of the Prohibition of Child Marriage Act, 2006.

3. It has been contended on his behalf that the applicant has not committed any offence and has been falsely implicated. The applicant was not present on the spot of the incident and had gone out for work. He had never harassed the victim physically or mentally. He and the victim had a love marriage. As the informant used to oppose the marriage the victim committed suicide out of depression. The charge-sheet has been filed. The applicant belongs to a reputed family. If released, he will cooperate with the investigation and will abide by all the conditions imposed by the Court. It is prayed that the applicant may be released on bail.

4. The say of the I.O., ld. APP and the informant was called for. The I.O. has filed his say at Exh.4. Ld. APP has adopted the same vide the pursis at Exh.3. They have opposed the bail application on the ground that the offence is very serious in nature. The applicant married the victim knowing that she is minor. She was subjected to physical and mental harassment. If released, he may abscond. He may even try to threaten or pressurise the informant or the witnesses. It is prayed that the application may be rejected.

5. The informant has filed his say at Exh.5. He has opposed the bail application on the ground that the applicant used to trouble the victim for no reason. He has prayed that the applicant may be rejected.

6. Ld. advocate for the applicant argued that the applicant is a young boy of 24 years. The other accused persons are on bail. The applicant was not present on the spot of the incident when the incident occurred. There is a delay of one day in lodging the FIR. He submitted that the applicant and the victim had a love marriage. They belong to different communities. The victim had to face tremendous pressure from her parents due to the said reason and therefore, she committed suicide. The applicant did not have any role in her suicide. The ingredients of the offences punishable under Section 4, 8, 12, 17 POCSO are not attracted as the applicant was married to the victim. The charge-sheet has already been filed. Nothing is to be recovered or discovered at the instance of the applicant. In view of the approaching

Diwali festival, he prayed that the applicant may be released on bail.

7. Ld.APP argued that the FIR clearly shows that the victim was subjected to physical and mental cruelty by the applicant and her in-laws. They used to taunt her constantly. They did not let her go out of the house or talk to anyone. In short they had imposed many restrictions on her. The victim could not bear the continuous harassment. The applicant is the responsible for the victim's suicide. Ld. APP further argued that the applicant and the victim had a love marriage. He was well aware that the victim is a minor. In spite of that, he married her. Therefore, it cannot be said that the offences punishable under Sections 4, 7, 12 and 17 POCSO are not attracted. If released, the applicant may threaten or pressurise the informant and the other witnesses. He may abscond. Ld. APP also referred to the say filed by the informant and submitted that the application may be rejected.

8. In the present case, on perusal of the material before the Court, it can be seen that the facts that applicant was married to the victim and that she was a minor at that time have not been denied by the applicant. There are specific allegations in the FIR that the applicant and her in-laws had subjected her to physical and mental cruelty. They had also imposed many restrictions on her. Ld. advocate for the applicant argued that the victim was under constant pressure from her parents as the victim and the applicant had a love marriage though they belonged to different communities. On perusal of the FIR,

it can be seen that the informant has mentioned therein that the victim had informed him about her love affair with the applicant. Thereafter, the informant and the applicant's relatives fixed their marriage after holding discussions. It is pertinent to note that, if the informant would have been against their marriage, he would have not taken the initiative to get his daughter married to the applicant. Therefore, the argument advanced by ld. advocate for the applicant is not acceptable. The victim has committed suicide within a few months of her marriage. This indicates that she may have been subjected to harassment by the applicant or her in-laws. It appears that she was left with no other option but to end her life.

9. Ld. advocate for the applicant argued that the offences punishable under Section 4, 8, 12 and 17 POCSO are not attracted against applicant No.1 as he was the victim's husband. In *Independent Thought vs. Union of India*, AIR 2018 SC (Criminal)) 229, the Hon'ble Apex Court had read down the Exception 2 to Section 375 IPC on the ground that it is discriminatory. It was observed that this is the only provision in various penal laws which gives immunity to the husband. The husband is not immune from prosecution as far as other offences are concerned. The Hon'ble Apex Court was of the opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:-

“(i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and,

therefore, violative of Article 14, 15 and 21 of the Constitution of India;

(ii) it is discriminatory and violative of Article 14 of the Constitution of India and;

(iii) it is inconsistent with the provisions of POCSO, which must prevail.”

10. The major inconsistency between POCSO Act and IPC was also considered by the Hon'ble Apex Court and therefore, the said Exception to Section 375 of the IPC was rather modified and instead of age 15 it was replaced by the word "18". It will have to be said that since the law has been laid down by the Hon'ble Apex Court under Article 32 of the Constitution of India, it is the law and it will have to be interpreted in the same way which has been put in the above judgment of the Hon'ble Apex Court.

11. In Ramnath S/o Ashok Shinde vs. The State of Maharashtra, Anticipatory Bail Application No.118/2022 with Criminal Application No.970/2022, the Hon'ble Bombay High Court has referred to the above judgment of the Hon'ble Apex Court and observed that, the applicant, therein could not take up defence that since he was married to the informant he would not be liable for prosecution.

12. From the above two judgments it can be seen that the Hon'ble Bombay High Court and Hon'ble Apex Court have always given serious consideration to matters involving offences against

minor girls. Merely because the applicant was married to the victim, he would not be entitled to claim immunity from prosecution for the offences with which he has been charged. In the present case also, the applicant has not denied that he was aware that the victim was a minor when they got married. The incident has occurred within a few months of her marriage. As per the record, the applicant and the victim had a love marriage. Considering this fact, it appears difficult to believe that the victim would commit suicide only because she was under parental pressure over her love marriage. A newly married girl, especially one who had married the person of her choice would not usually take the extreme step of committing suicide unless she was subjected to continuous harassment which was unbearable for her. In the present case, it appears that the victim was left with no other option and therefore, she committed suicide. The material before the Court prima facie discloses that there are sufficient grounds to proceed against the applicant. As pointed out by the I.O. and ld. APP, it appears likely that the applicant may threaten or pressurise the informant or other witnesses, if he is released on bail.

13. In *Gurcharan Singh and others Vs. State (Delhi Administration)* AIR, 1978 SC 179, the Hon'ble Apex Court had laid down the considerations while deciding the bail applications which are; the nature and the gravity of the offence, the position and status of the accused with reference to the victim and the witnesses. The likelihood of the accused fleeing from justice or repeating the offence, the history of the case etc. In the present case, there is every possibility

that the applicant may threaten or pressurize the informant or the witnesses. Therefore, in the given facts and circumstances, the applicant ought not to be released on bail. Considering the above I proceed to pass following order :-

ORDER

The application stands rejected.

(Dictated and pronounced in open Court)

Date : 20/10/2022
Place: Nashik

(S.N.Bhalerao)
Special Judge, Nashik