

: ORDER BELOW EXH.7 IN SPECIAL CASE NO. 49/2021 :

1) This is first bail application, filed by accused no.1 to 4 under section 439 of the Code of Criminal Procedure in connection with Crime No.87/2021 registered with Pali police station for the offence punishable under sections 376, 376(2)(j) (n) read with section 34 of the Indian Penal Code, under sections 4, 8, 12 & 17 of the Protection of Children From Sexual Offences Act, 2012 and under sections 6, 10, 11 of the Prohibition of Child Marriage Act, 2006.

2) According to the accused, the sections levelled against them are not applicable to them. The victim and juvenile offender have love affair. There are contradictions in the statements of the victim and there are different versions, which are not at all believable. There is no official registration of the birth date of victim girl, as mentioned in the charge-sheet. These accused are uneducated with no exposure to the outside world and they have been falsely implicated. They are in custody since 02.09.2021. They do not having any criminal antecedents. The concocted story has been mentioned. They are ready to abide the terms & conditions of the bail. Hence, this application for bail.

3) The prosecution has filed their reply at Exh.8 and strongly objected the application on the grounds that, the offence is of serious nature. The accused and the victim girl are of the same village. If these accused have been released on bail, they

will pressurize the victim girl and other prosecution witnesses. They will not remain present in the Court and for these reasons the prosecution having objection to release the accused on bail.

4) Heard Ld. Advocate Shri. Swapnil Dighe for the accused and A.P.P. Shri. Tendulkar for the State. Perused the charge-sheet papers.

5) The allegations against these accused are that, the accused no.1 & 2 are the parents of victim girl and the accused no.3 & 4 are the parents of juvenile offender. In the year 2020, while these accused persons alongwith their children were at Karnataka for labour work, they came to know each other. Then they performed the marriage of victim girl aged about 13 years old with juvenile offender aged about 17 years old. The victim girl was residing in the house of accused no.3 & 4. The juvenile offender has kept physical relationship with the victim girl and therefore she was pregnant.

6) According to the accused, they are the parents and allegations about sexual assault and rape are not applicable against them. At the most, provisions under the Prohibition of Child Marriage Act, 2006 will be applicable against them. On the other hand, Ld. A.P.P. for the State submitted that section 17 of The Protection of Children From Sexual Offences Act, 2012 has been attracted against these accused for the abetment and the punishment provided for the said offence, is same as provided for

main offence. So, there is severe punishment for the abetment under the Protection of Children From Sexual Offences Act, 2012. Therefore the Ld. A.P.P. has submitted that the offence is of the serious nature and the accused are not entitled for the bail.

7) It is submitted on behalf of the Ld. Advocate for the accused that there was love affair between the victim minor girl and the juvenile offender and therefore, these accused were constrained to take such type of decision. Besides this, it is argued that there is no sufficient evidence about the age of the victim girl that she is minor and the different birth date of the victim girl has come on record. So, looking to the same, the provisions of The Protection of Children From Sexual Offences Act, 2012 are not applicable to the present matter and has submitted to release the accused persons on bail.

8) As it appears that these accused are the parents of the minor victim girl and the juvenile offender and they belongs to Adivasi community. The investigation is already completed and the charge-sheet has been filed against them. The victim minor girl has given birth to a daughter. The victim girl has not filed a complaint and the complaint is filed by API Vijaykumar Deshmukh. The statement of victim girl is already recorded. There is certificate on record issued by the Grampanchayat in respect of that the registration of birth of the victim girl has not been done. The prosecution has relied upon the copy of School Leaving Certificate of the victim girl, in which the birth date is

mentioned as 13.03.2004. It shows there is no firm document about the age of victim girl. Besides this, considering the allegations against the accused that they are parents of victim girl and juvenile offender and there was love affair between victim girl and the juvenile offender and also the fact that the accused do not having criminal antecedents and they are the local residents and their presence can be easily secured during trial, I find, it is a fit case to grant bail on certain terms & conditions. Hence, proceed to pass the following order :-

: O R D E R :

- 1) The application is allowed.
- 2) The accused no.1 Rajendra Dattatreya Waghmare, no.2 Asha Rajendra Waghmare, no.3 Lahu Barkya Pawar and no.4 Sangita Lahu Pawar, in C.R.No.87/2021, registered with Pali police station, be released on bail on their executing Personal Bond of Rs.25,000/- with one solvent surety of like amount, each, on the following conditions :-
 - (i) They shall not pressurize the prosecution witnesses, in any manner.
 - (ii) They shall not leave the jurisdiction of this Court till end of the trial.

- (iii) They shall furnish proof of their identity and residential address.
- (iv) They shall furnish their mobile phone numbers and shall not change or discontinue with mobile numbers, till the end of the trial.

(Dictated and pronounced in open Court)

Mangaon.
Date : 30.09.2021.

(Priya P. Bankar)
Judge, Special Court,
Mangaon-Raigad