

ORDER BELOW Exh.8 IN SPL.C.NO.410/2024
(State of Maharashtra Vs.Omkar Jagannath Mane)
(CNR No.MHSN170013022024)

1. Perused the application, the say of IO Exh.10, documents and citations relied by both sides. Heard Ld. Counsel Shri Rohit Pawar, Ld. APP M.B. Kulkarni on the point of regular bail to applicant/accused No.1 namely; Omkar Jagannath Mane involved in crime No.517/2023 under section 363, 368, 376(2) (n), 34 of the IPC and section 4,5(l), 5(j)(2), 6,17 of the Protection of Children from Sexual Offences Act, 2012 registered at Vita Police Station.

2. It is the case of the prosecution that, Complainant is residing with her husband and daughters name of one daughter is Pratiksha Rajendra Rathod and birth date was 08-06-2008 and second daughter name is Pranali she is Nine Years Old. Her Husband Have Hotel Business and Her Daughter was studying at Sanjay Pawar Junior college Vita she is Studying 11 standard in Arts Stream. On 28-10-2023 in the Morning in 7.30 she was dropped on the Motorcycle in the college for her 11 Standard Examination her Examination was to be over at 10.30 so complainant went to pick up her she was not found there so complainant went to her teacher and inquired about her at that time it was revealed that she was absent in the examination. Complainant searched her at the school vicinity so also, she searched her at friends and Relatives she was not found so it was ascertained that some unknown person Abducted her for Unknown Reason. Further investigation is completed by the IO.

And final charge sheet filled by I.O Before Hon'ble Session Judge Vita on date 14-12-2024. Thereafter this present chargesheet is submitted before this Hon'ble court bearing Spl. Session Case No. 410/2024.

3. The applicant has sought bail on the grounds that present applicant is innocent person and he is falsely implicated in this offence due to grudge and with intent to settle the dispute as per her own accord of the complainant. On perusal F.I.R. It reveals that the F.I.R is after thought complaint of the complainant. The conduct of the prosecution/victim in this case indicates that the victim left her home on her own will and stayed with the applicant in a room. In present case both the parties married at Nashik at a temple on 30-01-2023 and thereafter were living as husband and wife. The facts of the case suggest that she had sufficient knowledge and capacity to understand the full implications of her actions and what she was doing. Upon perusal of the FIR, it is alleged that the present applicant has been in a physical relationship with the victim since December 2023, after they got married in Nashik. The present FIR has been lodged by the mother of the Victim girl against the unknown Person on 28-10-2023 then police issued notice under 50 of CRPC to applicant namely Omkar Jaganath Mane and arrested him after it was revealed that Victim girl delivered a child Love is Fundamental Human Experience, and adolescents have the right to form emotional connections. In the Present case there is no coercion or force of applied on the Victim girl. Upon perusal of the FIR, it appears that the victim

was mature enough to understand her actions. Neither the victim lodged any complaint against the applicant until she visited the hospital for treatment. Even at that time, she did not disclose anything. The fact that no complaint was made by the victim when she was examined by the doctor clearly indicates her conduct, as question of sexual assault does not arise as they are Married each other. On going Through chargesheet it reveals that necessary investigation was carried out and DNA sample was also collected and it was sent to chemical analysis on 07-11-2024. Present applicant is in judicial custody from 06-11-2024. The applicant is behind the bar since last six months yet prosecution wants to examine 17 witnesses it is not possible that Trial will not conclude in near Future. Upon perusal of the FIR, it is evident that the birth date of the victim is not correctly recorded. The victim was born much earlier than what is mentioned. To attract the provisions of the POCSO Act, the correct birth year must be clearly established. In the present case, the absence of an accurate birth record raises doubts regarding the applicability of POCSO provisions. On going Through record of government hospital Sambhaji Nagar (Aurangabad) in the case Paper age of Victim was Shown 20 Years, so it creates doubt regarding theory of sexual Assault on the Minor. On the Perusal of statement recorded under 164 Cr.P.C. it shows that victim herself contacted the applicant on fake id of Instagram and after that when she got information that her parents were going to lodge complaint against applicant she insisted applicant to run away but applicant was not ready for

that after many request he went with the victim and they got married in Nashik at a temple thereafter lived as Husband and wife and after that she herself went to vita and visited police station, so this conduct of victim shows that she herself left home. Upon perusal of the statement made by the victim, as a result, both of them left their home, believing that their parents would not consent to their marriage. And married at Nashik where they got married thereafter engaged in sexual relations. There is a considerable delay of one and half Years in filing the complaint. The first incident of sexual intercourse occurred in the year 2023, yet since then, the victim girl remained silent and did not report the matter. The allegation of sexual intercourse mentioned in the FIR indicates that the intercourse between both parties took place after their marriage. This suggests the state of mind of the applicant, demonstrating that he did not engage in any sexual activity out of mere lust or before marriage. Instead, it reflects that the applicant acted within the bounds of their marital relationship. On the Considering age of Prosecutrix she was enough major and it can be said that she was very of majority and she having knowledge of good and bad things in the society. On the Perusal charge-sheet it can be seen that custody of present applicant is not at all concerned for the purpose of further investigation. The present applicant has been wrongly involved in the present crime. The applicant was in police custody for considerable days but nothing has been transpired or recovered to connect the applicant with the complicity of present crime. As per FIR it

shows that victim girl and applicant were living as husband and wife from 2023 but up to lodging of this FIR, she never complained to anyone regarding the alleged offence. Ongoing FIR it shows that applicant was living as husband and wife with victim but when her Pregnancy was discovered by Police then report of rape was lodged against present applicant to harass the applicant. The allegation made out in the FIR and document taken as it is then also prima facie allegation in the FIR are not sufficient to constitute the offence. This present compliant is nothing but concocted and fabricated piece of evidence and delay of the complaint no were satisfactorily explained. The applicant wants to say that after the arrest during police custody applicant co-operated with the investigation machinery. The relevant investigation is also completed by the investigation machinery. Documents on record it can be seen that physical custody of present applicant is not at all required for the purpose of investigation as already investigation is carried. The applicant will not hamper or tamper with the prosecution evidence and there is no question of tampering of witness as mot of the witness are complainant's family members. The applicant is Young Boy and residing in the jurisdiction of this Hon'ble court. Family member are depending upon applicant. The applicant is ready to undertake that he will not abscond anywhere if he released on bail and will abide every condition imposed by the Hon'ble Court. He prayed for bail to the applicant.

4. Ld. Counsel Shri Rohit Pawar for the applicant submitted that the applicant and the victim had love relations. The victim went away voluntarily with the accused to Aurangabad and other places and they lived as husband and wife. The victim is having age of understanding and she is on the verge of majority. He relied upon observations in the case of Mohammed Ajaan Khan Vs. State of Maharashtra (Bail Appln.No.4621 of 2024 decided on 13.02.2025 by Hon'ble Bombay High Court) for stating that bail was granted to the accused considering consensual relations and age of the victim. He prayed to allow the application.

5. Ld.APP Shri M.B. Kulkarni for the State submitted that the accused committed similar offence by kidnapping the victim twice and by keeping physical relations with her. He also gave particulars of both offences i.e. Crime No.517/2023 and 34/2023 registered with Vita Police Station. He opposed bail application.

6. Considering rival submissions and material on record, it appears that the applicant and the victim are having love relations and the victim eloped with the applicant on two occasions. It shows that there is absence of element of any kind of use of force or physical assault. As the victim is a minor girl, prosecution has expressed concern. If observations in above referred citation are considered, the victim has crossed age of 15 years and she is having enough understanding. Furthermore, there is shade of love relations to the matter.

Considering attending circumstances, long incarceration of the applicant is not justified. He can be released on bail by imposing stringent conditions. Hence, I pass following order :-

ORDER

1. Applications Exh.8 is allowed.
2. Applicant/ accused No.1 namely; Omkar Jagannath Mane involved in crime No.517/2023 under section 363, 368, 376(2) (n), 34 of the IPC and section 4,5(1), 5(j)(2), 6,17 of the Protection of Children from Sexual Offences Act, 2012 registered at Vita Police Station be released on executing PR bond of Rs30,000/- with one or more solvent sureties in the sum aggregating to Rs.30,000/- b on following conditions:-
 - (a) He 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 him from disclosing such facts to the Court or any police officer or tamper with the evidence.
 - (b) He shall furnish his detailed temporary and permanent address, mobile/contact number, address proof, identity proof at the time of furnishing bail.
 - (d) In case of change of his residence or mobile/contact number, they shall inform it to the court and the investigating officer.
 - (e) He shall attend the court regularly.
3. Application Exh.10 is disposed of accordingly.

Vita
dt.11.04.2025

(R.R.Bhagwat)
Additional Sessions Judge,Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F. file, are same word to word, as per the original order.

Name of Stenographer	: S.V.Agnihotri (Steno Grade-I)
Court	: DJ-1 & Addl. Sessions Judge, Vita
Date of order	: 11.04.2025
Signed by Presiding officer on	: 11.04.2025
Uploaded on	: 11.04.2025