

ORDER BELOW EXH.1

1] Perused application and say. Heard Advocate for applicant and APP for the State.

2] This is first bail application filed under section 439 of Cr.P.C. by applicant in respect of his arrest in C.R. No. 75/2020 registered at Kondhwa Police Station for the offence punishable under sections 376(2) of the Indian Penal Code, under sections 4, 5(n) of the Protection of Children from Sexual Offences Act, 2012 and S. 9 and 10 of Prohibition of Child Marriage Act. It is alleged that victim aged about 16 years lodged report stating that she was residing with her parents i.e. accused No. 4 and 5. On 25.6.2019 accused No.4 and 5 took victim at Kondhwa for marriage ceremony of their relative, but when they reached there, they asked victim that she had to marry with present applicant Aaftaf Raju Pathan. Victim refused for marriage as she was minor. But, accused No.4 and 5 threatened to kill her and threatened to do something bad to their life. Therefore, she was constrained to marry with present applicant. After marriage, present applicant committed forcible sexual intercourse with her and his parents i.e. accused No. 2 and 3 illtreated her and one lady helped present applicant in committing forcible sexual intercourse with victim.

3] According to applicant he is falsely implicated in this matter. He is sufficiently interrogated. Victim is major and as per her Aadhaar Card her birth year is 2000. She is presently in Mahila Sevagram and left the house of applicant without informing anyone. In that regard, Missing Complaint was filed by accused No.2 in Kondhwa police station. There is inordinate delay in lodging report. Marriage between victim and applicant was solemnized on 26.6.2019 and it was registered vide registration No. 007. Applicant never forced victim. Co-accused are released on bail and there is ground of parity.

Applicant belongs to poor family. He is 21 years old and doing business. He is permanently resident of Lohiya Nagar, Pune. He has no criminal antecedents. He is ready to abide the conditions. Hence, he prayed to release him on bail.

4] APP and I.O. objected this application on the ground that applicant is main accused and he forcibly committed sexual intercourse with minor victim. Applicant will pressurize victim and witnesses. There is possibility of tampering prosecution evidence. So, they prayed to reject the application.

5] Allegations against the applicant are serious. From statement of victim role attributed to applicant can be gathered. According to victim, her family members forced her to marry with present applicant and after marriage present applicant, his parents mentally and physically harassed her. It is alleged that present applicant repeatedly committed forcible sexual intercourse with her from time to time. According to Advocate of applicant, marriage between victim and present applicant was performed as per Muslim Rites and Customs and, in that regard, Marriage Certificate is filed on record. He also submitted that as per Aadhaar Card of victim her age is more. Moreover, as per Muslim Law, after attaining age of majority her marriage was performed and it is not void marriage.

6] In case in hand, in police papers, copy of school leaving certificate of victim showing her birth date 27.6.2004 is filed. So, age of victim is disputed. Further, offences under Protection of Children from Sexual Offences Act are levelled against accused which is special enactment for protection of children. Therefore, the provisions of Protection of Children from Sexual Offences Act will prevail. In case in hand, as per statement of

victim, her parents forced her to marry with applicant on 26.6.2019, present report is filed on 20.01.2020. Prior to that, mother in law of victim namely Shirin lodged Missing Report of victim dt. 13.01.2020. In Medical Report, victim made similar allegations against applicant by mentioning him as her husband and Medical Report shows evidence of vaginal penetration but there are no fresh injuries on person of victim.

7] Moreover, after completion of investigation charge-sheet is filed. Therefore, personal custody of applicant is not required. Applicant is 21 years old and doing business. Co-accused are released on bail. However, due to allegations against present applicant, there is gravity of offence and it is proper to impose strict conditions while considering his bail application. He is resident of Lohiya nagar, Pune and has no criminal antecedents. No purpose would serve by keeping the applicant behind bar for unknown period. Due to all above reasons application deserves to be allowed with following order -

ORDER

- 1] The application is allowed.
- 2] The applicant Aftab Raju Pathan be released on executing P.R. bond of Rs.50,000/- with one or two solvent sureties in the like amount.
- 3] The applicant shall not tamper the prosecution witnesses in any manner.
- 4] The applicant shall attend each and every date of proceeding.
- 5] The applicant shall not repeat the same offence.
- 6] Any two consecutive defaults in complying with the above conditions will attract the provisions of cancellation of bail.
- 7] The applicant shall co-operate investigating machinery as and when required.

- 8] Prior to furnishing surety, the applicant shall submit his address proof, mobile number and inform about the change in address and mobile number.
- 9] The applicant shall submit list of three blood relatives with his detail residential addresses and addresses of their place of work.

Sd/-

(R.V.Adone)

Addl.Sessions Judge, Pune.

Pune.

Date -01.6.2020.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau. Arya Nikam (Stenographer G-1)
Court Name	- Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Order	- 01.6.2020.
Order signed by P.O.	- 01.6.2020.
Order uploaded on	- 02.6.2020.

