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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 10<sup>th</sup> OF NOVEMBER, 2022**

**MISC. CRIMINAL CASE No. 52470 of 2022**

**BETWEEN:-**

**MOHD. ANSAR S/O MOHD ASLAM, AGED  
ABOUT 32 YEARS, OCCUPATION: PESHIMAM /  
HAFIZ R/O VILLAGE JAMWRA, POLICE  
STATION AND TAHSIL NARENI, DISTRICT  
BANDA (UTTAR PRADESH)**

**.....APPLICANT**

***(BY SHRI QUAZI FAKHRUDDIN, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
POLICE STATION SANOUNDHA, DISTRICT SAGAR  
(MADHYA PRADESH)**
- 2. VICTIM A D/O NOT MENTION NOT MENTION  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI PUNIT SHROTI, PANEL LAWYER)***

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*This application coming on for hearing this day, the court passed the  
following:*

**ORDER**

This first bail application under Section 439 of the Code of Criminal Procedure has been filed on behalf of the applicant for grant of bail in connection with Crime No.158/2022 registered at Police Station Sanoudha, District Sagar (M.P.) for the offence punishable under Sections 366Ka, 376, 376(2)(N) of the Indian Penal Code and Section 3/4 and 5/6 of the Protection of Children from Sexual Offences Act. The applicant is in jail since 17.05.2022.

As per the case of prosecution, on 27.04.2022 the cousin brother of the

prosecutrix lodged a missing person report before the police stating therein that he has every doubt that the applicant not only taken away the prosecutrix but also abducted her. The police after making an enquiry, recovered the prosecutrix on 17.05.2022 from the possession of the applicant. Subsequently, the statement of prosecutrix has been recorded wherein she has stated that the applicant after giving promise of marriage, developed physical relation with her. Therefore, the offence was registered against the applicant and arrested on 17.05.2022.

Learned counsel for the applicant submits that the applicant and the prosecutrix were known to each other since last six months and the applicant used to visit her house to teach her Quran. He submits that the prosecutrix in her statement has stated that since the applicant has given an assurance of marriage to her, therefore, she went to Jhansi with him and from there they went to Delhi where they stayed in a rental room and thereafter they came to Agra where they stayed for a period of 15 days and during that period physical relation developed between them. The prosecutrix has also stated that she was not aware of the fact that the applicant is already married and this fact came to her knowledge only when it was disclosed by the police. The counsel for the applicant further submits that though the prosecutrix at the time of incident was more than 15 years of age but she had gone with the applicant as per her own desire and she also developed physical relation with him. He submits that the applicant has not forcefully developed physical relation. The counsel for the applicant after placing reliance upon a judgment of the Supreme Court reported in **2020 SCC OnLine HP 2462 (Rohit Sharma Vs. State of Himachal Pradesh)** and also the orders passed by the High Court of Punjab & Haryana at Chandigarh in **CRWP-7426-2022 (O&M)** parties being **Javed Vs. State of**

**Haryana and others, CRWP-5744-2022 (Gulam Deen and another Vs. State of Punjab and others, CRWP-12067-2021 (Nargis and another Vs. State of Punjab and others)** so also an order of passed by the High Court of Karnatak at Bengaluru reported in **2022 LiveLaw (Kar) 436** parties being **Mohammad Waseem Ahmad Vs. State** submits that in these cases, it has been observed that the marriage of a Muslim girl is governed by Muslim Personal Law and she is capable to enter into marriage with a person of her own choice and, therefore, under the circumstances when the prosecutrix is more than 15 years of age, it can be presumed that she has attained the age of majority for the purpose of marriage and as per Muslim Law, a boy or a girl who attained puberty is at liberty to enter into marriage with anyone to whom he/she likes and their guardians have no right to interfere if the match is equal. In the aforesaid cases, the High Courts have taken view relying upon Article 195 from the book of Mohammedan Law and have observed that as per Muslim Law after 15 years of age, a person attains the age of majority and as such, if physical relation is developed that would not be treated to be a rape and in such circumstances, if a person is tried under the provisions of the POCSO Act, he can be considered to be granted bail.

Shri Punit Shroti, learned Panel Lawyer appearing for the respondent/State has opposed the submissions made by the counsel for the applicant and submitted that here in this case if the statement of 161 of the prosecutrix is seen, it is clear that the applicant and prosecutrix did not enter into marriage and prosecutrix was aged about 16 years, physical relation developed between them though with the consent of prosecutrix but she was not aware of the fact that the applicant is already married and under the promise

given by the applicant to enter into marriage with the prosecutrix, she developed physical relation. He has further submitted that here it is not a case in which the applicant entered into marriage with prosecutrix and as such, the cases on which learned counsel for the applicant is placing reliance are not applicable in the facts and circumstances of the present case. He has submitted that had it been a case in which the applicant and prosecutrix entered into marriage despite the fact that the prosecutrix is minor but attained the age of majority as per puberty then developing physical relation even with the consent of the prosecutrix, the same cannot be considered to be an offence under the provisions of the POCSO Act as per the law laid down by several High Courts and bail application could have been considered. But, in this case the marriage has not been solemnized and the applicant has given false promise to the prosecutrix without disclosing the fact that he is already married. He has further submitted that the issue with regard to fact whether a girl attaining age of majority as per puberty after 15 years of age would be governed with the provisions of the POCSO Act or not, is pending before the Supreme Court.

Considering the submissions made by the counsel for the parties, perusal of record and the after going through the judgment cited above, *prima facie* I am of the opinion that the cases on which counsel for the applicant is relying upon are not applicable in the present facts and circumstances. Here in this case, the applicant has given promise of marriage to the prosecutrix who was aged about 16 years without disclosing the fact that he is already married and also developed physical relation with her. From the statement of prosecutrix, it is clear that she had gone with the applicant as per her own desire but it does not mean that her consent for developing physical relation was a valid consent. In the cases on which reliance has been placed by the counsel for the applicant,

the prosecutrix entered into marriage though she was minor and developed physical relation, in such circumstances that was not considered to be invalid. In one of the cases i.e. **Criminal Petition No.7295/2022** parties being **Sri Aleem Pasha Vs. The State of Karnataka**, the Karnataka High Court while considering the bail application under Section 439 of the Cr.P.C. on the ground that the girl at the time of entering into marriage was aged about 17 years; the applicant was major; they entered into marriage; the prosecutrix became pregnant; and given birth to a child, has observed that though the prosecutrix and applicant are Muslims but the POCSO Act is a special Act and it prevails over the other Acts which permits sexual activity with a girl only after attaining the age of 18 years. The Court has granted bail on the ground that the applicant entered into marriage when the prosecutrix was 17 years of age and she was capable to understand the things and no purpose would be served if the husband is kept in jail because the result of trial would be obvious that the prosecutrix would not support the case of prosecution.

Considering the aforesaid facts and circumstances since in the present case the situation is otherwise as the applicant has given promise to marry with the prosecutrix who is aged about 16 years but not disclosed the fact that he is already married and the prosecutrix has also stated this fact that they have not entered into marriage, the cases relied by the applicant will not help him because he did not get married with prosecutrix, therefore, benefit of age of puberty cannot be given to him. Unless the statement of the prosecutrix is recorded in the Court, I am of the opinion that it is not a fit case in which bail can be granted to the applicant.

Accordingly, bail application is **rejected**.

ac/-

