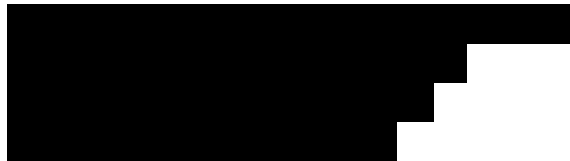




IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2514 OF 2024



...APPLICANT

VERSUS

- 1) The State of Maharashtra,  
Through Killari Police Station,  
District-Latur,
- 2) Aparna Ajitrao Salunke,  
Age-38 years, Occu:Service,  
R/o-Police Station, Killari,  
Taluka-Killari, District-Latur,
- 3) X. Y. Z.

...RESPONDENTS

...  
Mr. Dhananjay M. Shinde Advocate for Applicant.  
Mr. V.K. Kotecha, A.P.P. for Respondent Nos.1 and 2.  
Mr. Narayan Y. Chavan Advocate for Respondent No.3.  
...

CORAM: SMT. VIBHA KANKANWADI AND  
SANJAY A. DESHMUKH, JJ.

DATE OF RESERVING ORDER : 12<sup>th</sup> JUNE 2025

DATE OF PRONOUNCING ORDER : 25<sup>th</sup> JUNE 2025

**ORDER [PER SMT. VIBHA KANKANWADI, J.] :**

1. Present applicant seeks exception to challenge, at the initial stage, the First Information Report (for short "the FIR") vide Crime No. 52 of 2024 registered with Killari Police Station, District-Latur, on 30<sup>th</sup> January 2024, and then later on by way of amendment after filing of the charge-sheet for quashing the proceedings in Special Case No.44 of 2024, pending before the learned Special Judge under the Protection of Children from Sexual Offences Act, Latur for the offence punishable under Sections 376(2)(n)(3) of the Indian Penal Code, Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (for short "the POCSO Act") and Sections 9 and 11 of the Prohibition of Child Marriage Act.

2. Here, it is to be noted that the FIR has been lodged by respondent No.2, who is a police officer, after getting the information from the hospital authorities that respondent No.3 victim is a minor, aged 17 years and 6 months and still she got married to the applicant, became pregnant and delivered a child on 13<sup>th</sup> January 2024. Now respondent No.3 has filed an

affidavit-in-reply, so also she has given statement to the police authorities that the applicant is distantly related to her, there was love affair between herself and applicant. The applicant and victim ran away as parents from both sides were not in favour of their marriage and then they performed marriage in Tuljabhawani Temple at Tuljapur in 2023. Thereafter when they went to the house of the applicant, they were not taken inside the house and therefore, the applicant and victim were residing in rented room at Killari. She became pregnant from the applicant. In her 9<sup>th</sup> month of pregnancy, the applicant took her to her parental home and then parents admitted her in the hospital on 13<sup>th</sup> January 2024 and on that day she delivered a child. Now, in the affidavit-in-reply, respondent No.3 reiterates her said statement and submits that at the time of marriage she was of understanding age and after understanding for the consequences she has wisely taken decision of falling in love and they married. Now, if the applicant is prosecuted and punished then she herself and her daughter would suffer as there is no one to look after them. There is less likelihood that she will be accepted by the family of the applicant and therefore, she has no objection if the FIR and the proceedings are quashed and set aside.

3. Heard learned Advocate Mr. Shinde for the applicant, learned APP Mr Kotecha for the State and learned Advocate Mr. Chavan for respondent No.3.

4. Learned Advocate for the applicant submits that even in her statement before the police, respondent No.3 has not made any complaint or grievance against the applicant. The marriage that was performed by her with the applicant is with all understanding about the consequences. If the proceedings are not quashed and set aside, then there is possibility of conviction of the applicant and in that case the victim and the daughter would be the sufferers. There is no backing to the victim though it appears that the parents have now supported to the extent of her delivery. The statements of parents would also show that they were knowing about the love affair between the applicant and the victim. They had resisted and therefore, the applicant and respondent No.3 fled away and allegedly married against their wish. Though the girl appears to be minor, yet this is a case of adolescent love affair. The girl and the applicant were living peacefully and therefore, this case should be taken as an exceptional case. He relies on the decision in *K. Dhandapani vs.*

*State by the Inspector of Police, 2022 SCC Online SC 1056*, wherein the Hon'ble Supreme Court quashed and set aside the conviction of the accused when he had performed the marriage with the prosecutrix and in that case the prosecutrix was a minor. He also relies on the Division Bench decision of the Hon'ble Himachal Pradesh High Court in *Ranjeet Kumar vs. State of H.P. and others, 2023, SCC OnLine HP 1625*, wherein the powers under Section 482 of the Code of Criminal Procedure were exercised when there was a compromise. It is observed that:-

"The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is 'finest hour of justice'."

5. Learned Advocate for the applicant further relies on the decision of learned Single Bench of the Hon'ble Rajasthan High Court at Jodhpur, in *Tarun Vaishnav vs. State of Rajasthan through PP and another [S.B. Criminal Misc (Pet.)*

*No.6323/2022, decided on 13<sup>th</sup> October 2022*], wherein also in similar circumstances when it was found that the adolescent girl of 16 years was fallen in love with the boy of 22 years, it was taken as a fit case for quashing the proceedings on the basis of compromise. When the State of Rajasthan had challenged the said order before the Hon'ble Supreme Court in *Petition for Special Leave to Appeal (Cri.) No.1890 of 2023*, it was dismissed on 3<sup>rd</sup> March 2023. The Co-ordinate Bench of this Court at Nagpur in *Ankush S/o Vilasrao Pakhale vs. State of Maharashtra and another [Criminal Application (APL) No.706 of 2024, decided on 11<sup>th</sup> November 2024]*, exercised the powers taking into consideration the case of its own peculiarity and the earlier decisions of this Court were also considered along with decision in *Ramgopal and another vs. The State of Madhya Pradesh [Criminal Appeal No.1489/2012, decided on 29.09.2021]*.

6. Learned Advocate for respondent No.3, the victim, joins the learned Advocate for the applicant in making the said submissions. He reiterates that the girl would suffer and now not only the girl but also the daughter would suffer if the trial is directed to proceed further.

7. Per contra, the learned APP representing respondent State as well as the informant i.e. the police officer who had lodged the report on behalf of the State, strongly opposed the application and submits that the perusal of the application would show that on the date of application, the applicant was 27 years old person and he contends that he got married to respondent No.3 in 2023. That means, he might have been aged about 24 years at that time. He had the knowledge about the age of the girl and in spite of that as well as the fact that there was no consent to the said marriage either from the parents of the girl or from his own parents, he had kidnapped her from the legal custody of her parents and then it is stated that they exchanged the garlands in Tuljabhawani Temple at Tuljapur in 2023. Neither the applicant nor the girl were able to say when exactly they got married. It would be also a further question, as to whether there is a real marriage between them, only by exchange of the garlands. Thereafter the applicant has kept physical relations with the girl, who is admittedly a minor. Her consent cannot be considered as a consent within the four corners of law. The girl became pregnant and gave birth to the daughter on 13<sup>th</sup> January 2024. The facts are not denied in the affidavits by the applicant

as well as the victim. The charge-sheet would show that the birth date of the girl is 11<sup>th</sup> July 2006 and under such circumstance this is not a fit case where the proceedings should be quashed and set aside. The purpose, for which the Protection of Children from Sexual Offences Act, 2012 was enacted, will get frustrated. The decisions relied by the applicant are not helpful to the applicant as in some of them the trial had concluded.

8. In the beginning, we would like to proceed with the fact that the present case is the classic example and one of the case wherein the burning issue of child marriage is involved. But the law appears to be not yet settled. Even in recent order in ***Re: Right To Privacy of Adolescents, [Suo motu Writ Petition (C) No.3 of 2023 with Criminal Appeal No.1451 of 2024, decided on 23<sup>rd</sup> May 2025]***, the Hon'ble Supreme Court has shown concern regarding criminalization of consensual adolescent relationships under POCSO Act. Learned Amici Curiae had prayed for certain directions to be given to the Central Government to consider decriminalizing adolescent relationships under POCSO Act and to frame a national sex education policy and the Hon'ble Supreme Court had given certain directions to the Central Government and asked to consider the implementation of the suggestions of

the learned Amici Curiae based on the report. It appears that the final directions are still awaited. The Central Government is yet to respond to the said order dated 23<sup>rd</sup> May 2025. In continuation, we would like to state that at present there are contrary decisions of various High Courts. Some High Courts are of the opinion that adolescent love cannot be controlled by the Courts, adolescents should be free to have romantic relationships. However, the question would be, till the Central Government responds, whether it would be proper to quash and set aside the proceedings.

9. We would like to consider the object with which the POCSO Act was introduced. It was introduced to protect children from sexual assault, sexual harassment and child pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. Now the question is, as to what should be the age group to consider that it is adolescent love or love between two adolescents which is tried to be brought in the purview or only one party i.e. girl, adolescent falling in love with the boy of whatever age, her case should also be covered under this. In ***K. Dhandapani vs. State by the Inspector of Police***, (supra), when

the offence was committed, the prosecutrix was aged 14 years. She gave birth to the first child when she was 15 years and the second child was born when she was 17 years of age. The Hon'ble Supreme Court in clear terms observed that, "In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court." That means, there was a full-fledged trial wherein accused was convicted by the Special Judge, confirmed by the High Court and then the matter reached the Hon'ble Supreme Court. The entire evidence was before the Hon'ble Supreme Court when the matter was heard. Even with directions by the Hon'ble Supreme Court on 8<sup>th</sup> March 2022, it was directed that the District Judge should record the statement of the prosecutrix about her present status and that subsequent events were then considered. The powers those were exercised in that matter by the Hon'ble Supreme Court, were under Article 142 of the Constitution of India and therefore, the said case cannot be considered while considering the present compromise or prayer based upon the so-called compromise. The other decisions which the applicant wants to rely on are of Co-equal

Bench and taking into consideration the facts, the powers then exercised.

10. There is scientific reason for making the rule for age of marriage. However, we must accept that still the child marriages are extensively taking place in spite of the efforts by the Government to educate the people about the hazards of the child marriages. The teenage pregnancy would be the second social problem. When such child marriages take place there is a risk of complication related to pregnancy and some may result in death. There is also higher risk of premature births of the children to minor mothers with other health problems. When such social menace is there, that is also required to be considered by this Court.

11. It is to be noted here that in local newspaper i.e. *Divya Marathi*, dated 4<sup>th</sup> June 2025, a news has appeared stating that the Health Department of Maharashtra State has noticed that during last year i.e. 2024, in Aurangabad District itself, there were 453 child marriages in which the minor married girls were pregnant. Number-wise break-up in each Taluka of Aurangabad District is as under:-

| Sr. No. | Name of Taluka            | Number of child marriages in which the minor married girls were pregnant |
|---------|---------------------------|--------------------------------------------------------------------------|
| 01      | Soygaon                   | 12                                                                       |
| 02      | Phulambri                 | 05                                                                       |
| 03      | Chhatrapati Sambhajinagar | 35                                                                       |
| 04      | Kannad                    | 37                                                                       |
| 05      | Gangapur                  | 04                                                                       |
| 06      | Sillod                    | 86                                                                       |
| 07      | Khultabad                 | 08                                                                       |
| 08      | Paithan                   | 170                                                                      |
| 09      | Vaijapur                  | 96                                                                       |
|         | <b>TOTAL</b>              | <b>453</b>                                                               |

12. Now turning to the facts of the present case, if we consider the statement of the girl, it can be seen that she was aware about her own age. She then states that she fell in love with the applicant and as there was non acceptance of their relationship from both the families, they both went to Tuljabhawani Temple at Tuljapur and it is stated that they performed marriage by exchange of garlands. Though she states that the said marriage was as per Hindu rites, it appears that she is not even aware what are the Hindu rites in respect of the

marriage. She is not able to give the date of marriage. Nobody appears to have been present. She has not given the name of the priest who asked them to undergo the rituals. Therefore, merely in front of Goddess if they have exchanged the garlands, whether that can be considered as a marriage, itself is a question. Then she states that she was not accepted by the parents or family members of the applicant and therefore, they both went to Killari, took a room on rent and started residing. There were physical relations and then she became pregnant. Thereafter when she was in her 9 month's pregnancy, the applicant is stated to have left her with her parents and in the statement of her parents it is specifically stated that when she was pregnant, out of love they had kept her with them. They do not say that they are accepting the relationship or they want to bury the differences that had arose due to the steps taken by their daughter. The fact which cannot be brushed aside is that the applicant was around 26 years of age at the time of alleged marriage. At least he ought to have understood that he should wait till the girl attains 18 years of age. Then in spite of having knowledge that the girl is minor, when he takes her away from the legal custody of her parents, from that point itself he commits the offence. Merely because now the girl has given birth

to the daughter, we are of the opinion that this should not wipe out the acts of the applicant. If the Courts start accepting that a fairly major boy of age 25 years on-wards takes such step of taking away the girl who is a minor and then now comes with the defence of adolescent love, then it will not be good sign from the legal point of view, because particular acts are legislated with certain aims and objects. Now unless the things are clarified by the Central Government upon directions of the Hon'ble Supreme Court, we should not consider such cases (we are carving out those cases wherein both the parties are adolescent and innocent.)

13. We would like to rely upon the Three Judge Bench decision of the Hon'ble Supreme Court in ***Anversinh @ Kiransinh Fatesinh Zala vs. State of Gujarat, 2021(3) S.C.C. 12***, wherein it has been held that :-

"where a minor girl under Section 361 IPC (under 18 years of age) is taken or enticed from the keeping of her lawful guardian without their consent, her own consent is not a valid defence to the charge of kidnapping. Minors are deemed incapable of giving lawful consent, and Section 361 IPC prioritizes the guardian's right to protect the minor's physical safety. An infatuation and

consensual relationship with the accused does not automatically negate the offence of kidnapping a minor. "

14. We, therefore, do not find this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure by making the case as of exceptional circumstances.

15. The Application stands rejected.

**[SANJAY A. DESHMUKH]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**

asb/JUNE25