

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7975 of 2023

Applicant :- Pappu

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Vishnu Murti Tripathi

Counsel for Opposite Party :- G.A.,Juned Alam,Pradeep Kumar

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Vishnu Murti Tripathi, learned counsel for applicant, Sri Pradeep Kumar, learned counsel for informant and Sri Chandan Agarwal, learned A.G.A.-I for State.

2. Applicant has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. in Case Crime No.525 of 2022 under Sections 363, 366, 376(3) I.P.C. and 3/4 of POCSO Act, Police Station- Kokhraj, District - Kaushambi after rejection of his Bail Application vide order dated 05.12.2022 passed by Special Judge(POCSO Act), Kaushambi.

3. Informant (Mother of victim) has lodged an F.I.R. that her daughter (D.O.B. 01.01.2009) went to attend nature's call on 21.08.2022, however, when she did not return, a rigorous search was undertaken but she could not be found and, therefore, on 24.08.2022, she lodged the F.I.R against unknown person under Section 363 I.P.C.

4. Learned counsel for applicant submits that delay of three days in lodging F.I.R. remained unexplained. It appears that victim was recovered alone on 15.11.2022, thereafter, she gave her statement under Sections 161 and 164 Cr.P.C. that she

along with applicant ran away and got married, however, later on they were apprehended.

5. Learned counsel further submits that victim has taken contrary stand in her statement before Magistrate that applicant has enticed her and forcefully kidnapped and took her to Prayagraj for Marriage. She was forcefully remained with applicant, who made physical relationship against her will.

6. Learned counsel further submits that according to radiological examination, age of victim is opined between 17 to 18 years. It was a case of consensual relationship and victim has love affair with applicant. They got married and lived together as husband-wife.

7. The above submissions are opposed by learned A.G.A.-I for State that according to educational document, age of victim on the date of occurrence was about 15 years and 8 months, therefore, she was a minor girl and as such her consent, if any, is immaterial. She has specifically stated in her statement recorded under Section 164 Cr.P.C. that applicant not only enticed her but forced her to marry and made physical relationship against her will.

8. Learned A.G.A.-I referred a certificate of marriage issued by Arya Samaj, Krishna Nagar, Prayagraj and has submitted that they have solemnized marriage of a minor girl, which is an illegal act and for that this Court may issue an appropriate direction.

9. In the present case, according to educational document, age of victim on the date of occurrence was about 15 years and 8 months and according to her medical examination also,

age is opined between 17 to 18 years, therefore, victim is a minor girl and accordingly, there is merit in argument of learned A.G.A-I that consent of a minor girl is immaterial. Victim has specifically stated in her statement recorded under Section 161 Cr.P.C. that she was not only forcefully kidnapped but forcefully married also and applicant has made physical relationship against her will and since, statement of victim has not been recorded till date during trial, therefore, there is a possibility that in case of bail, applicant will try to influence her.

10. Accordingly bail application is rejected, however, Trial Court is directed to record the statement of victim expeditiously, preferably within a period of three months. Thereafter applicant will have liberty to file a fresh bail application.

11. Before parting with judgment, the Court took serious note that Arya Samaj, Krishna Nagar, Prayagraj has issued a marriage certificate of applicant with victim, a copy of same is on record. Marriage certificate does not indicate how age of victim is verified i.e. above 18 years. It was the duty of Arya Samaj Krishna Nagar, Prayagraj that before solemnizing marriage, it should be carefully verified whether they are solemnizing a marriage between two adult persons or not. It amounts to a child marriage which was opposed by Swami Dayanand Saraswati Ji.

12. It would be apposite to mention here that Arya Samaj, a reformist movement was commenced in 1875 by Swami

Dayananda Saraswati and is based on following ten basis principles :-

(i) God is the efficient cause of all true knowledge and all that is known through knowledge.

(ii) God is existent, intelligent and blissful. He is formless, omniscient, just, merciful, unborn, endless, unchangeable, beginning-less, unequalled, the support of all, the master of all, omnipresent, immanent, un-aging, immortal, fearless, eternal and holy, and the maker of all. He alone is worthy of being worshipped.

(iii) The Vedas are the scriptures of all true knowledge. It is the paramount duty of all Aryas to read them, teach them, recite them and to hear them being read.

(iv) One should always be ready to accept truth and to renounce untruth.

(v) All acts should be performed in accordance with Dharma that is, after deliberating what is right and wrong.

(vi) The prime object of the Arya Samaj is to do good to the world, that is, to promote physical, spiritual and social good of everyone.

(vii) Our conduct towards all should be guided by love, righteousness and justice.

(viii) We should dispel Avidya (ignorance) and promote Vidya (knowledge).

(ix) No one should be content with promoting his/her good only; on the contrary, one should look for his/her good in promoting the good of all.

(x) One should regard oneself under restriction to follow the rules of society calculated to promote the well being of

all, while in following the rules of individual welfare all should be free.

13. Vivah Sanskar has always been a sacred and pious process for a bride and groom before they enters into their Grihasth Ashram. According to Arya Samaj's ritual, it includes Varmala & Swagat, Vidhi Madhuparkaa, Yagna & Kanyadaan, Havan & Godan, Pani Grahan Sanskar, Shilarohan, Lajahom, Phere or Parikrama, Kesh Mochan, Saptapadi & Hriday Sparsh Mantra, Sindoor & Mangalsutra and Surya Darshan. They at the time of Vivah Sanskar odour to be Arya Samajist and they devout the rituals with all sincerity and devotion, therefore, it become a duty of responsible office bearers of Arya Samaj to stop their pious efforts to propagate teachings of Swami Dayanand Ji including to curb 'child marriage' to be misused by persons, who indulge them in solemnising such marriage which may not be legalised. For example a marriage of minor as the case in hand, which would also in direct conflict of one of the mottos of Swami Dayanand, to stop 'child marriage'.

14. Of late, Court has encountered with certificate being issued for marriages solemnised by Arya Samaj's ritual by misleading them on basis of forged or incorrect declaration that both bride and groom are major, however invariably it was found to be contrary to record and thus indulged the members of Arya Samaj to commit not only an illegality but to act against the teachings of their guru. This would not less than betraying the trust of Swami Dayanand imposed on members of Samaj. As referred above, facts of present case are glaring example where accused and victim have played fraud with belief of Arya Samaj. The victim is a minor girl who was less

than 16 years when her marriage was solemnised with applicant.

15. It is high time when Arya Samaj has to do introspection so that they may not be subjected to fraud. They have to make stringent rules and procedure to verify the credentials of prospective bride and groom, especially when they are on run from their respective families or they are approached through touts, who are prevailing in Allahabad as they are promising couples on run, that they will get protection from this Court. If responsible members does not take cognizance of this menace, a day will come soon that Arya Samaj Mandir will become a place for solemnizing illegal marriage and their prestige will be in doom.

16. I have first hand information that how a priest at an Arya Samaj Mandir, near to High Court has convinced a person that marriage can be solemnized with minimum papers and he would get concession in fee fixed for marriage. Priest has endeavoured that said person be convinced so that marriage of prospective bride and groom be solemnized at the Mandir. It shows how a pious place is becoming a place for conducting activity for money which may not fall under 'legal activity'.

17. The Court has perused judgment passed by Division Bench of Madhya Pradesh High Court at Gwalior in **Arya Samaj, Gwalior Vs. State of M.P. and others, 2017 SCC OnLine MP 904** and in judgment passed by Division Bench of Allahabad High Court in **Ashish Morya Vs. Anamika Dhiman, 2022(12) ADJ 584 (DB)** and by this Court in **Habeas Corpus Writ Petition No. 637 of 2022(Bhola Singh and Another Vs. State of U.P. and 5 Others)** decided on **31.08.2022**.

18. Therefore, this Court is suggesting *inter alia* some suggestions and also issuing some directions:

1. A check list of essential documents be prepared and a mechanism be developed to cross check veracity and genuineness of documents to verify age of proposed couple and in case of any doubt, marriage may not be solemnized.

2. A mechanism be developed to ascertain whether any criminal proceedings are initiated against groom or bride and whether any age of boy or girl is disclosed therein or not.

3. A counselling be proposed to couples so that they may not enter into any criminal act i.e solemnizing a marriage before reaching marriageable age.

4. Format of marriage certificate be modified to include details of parentage, details of proof of age and details of witnesses with their ID proof. They may be required to file an affidavit also.

5. Or any other measure, which would be appropriate to stop child marriage

19. It is a old saying that “Prevention is better than Cure”, therefore, it is directed that Arya Samaj Krishna Nagar, Prayagraj shall not solemnise any marriage where proposed groom and bride have no consent from there families for a period of two months from today.

20. The apex body of Arya Samaj is ‘Sarvadeshik Arya Pratinidhi Sabha’, having its office at 15 Hanuman Road, New Delhi. The Court directs its President to look into above referred legal issues and proposed suggestions so that a

guideline be issued by the apex body with the object to avoid Arya Samaj Mandir to be a part of 'child marriage' and for that discussion/consultation be undertaken with stake holders, Senior Arya Samajists etc. The President, Sarvadeshik Arya Pratinidhi Sabha shall prepare a guideline/report which shall be submitted before this Court through Registrar General within a period of eight weeks from today.

21. Registrar (Compliance) is directed to take steps.

22. List before appropriate Bench for consideration of guideline/report submitted by the President, Sarvadeshik Arya Pratinidhi Sabha.

Order Date :- 20.4.2023

P. Pandey