

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 369 OF 2016
IN
CRIMINAL APPEAL NO. 206 OF 2016

Marzina Sabir Shaikh	...	Applicant/Accused
vs.		
The State of Maharashtra	...	Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 307 OF 2016
in
CRIMINAL APPEAL NO. 172 OF 2016

Vinod Bhuvaneshwar Sharma	...	Applicant
vs.		(Orig. Accused No.1.)
The State of Maharashtra	..	Respondent

Mr. Sujit Shelar, Advocate for the applicant in APPA/369/2016.

Mr. Prabhanjay R. Dave, Advocate for the applicant in APPA No.307/2016..

Mr. S.S.Pednekar, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 5th April, 2016.

P.C.

These are the applications under Section 389 of Cr.P.C. The applicants are seeking suspension of substantive sentence as they have been convicted for the offence punishable under Section 366B read with Section 34 of IPC and sentenced to suffer R.I. for five years and fine of

Rs.10,000/- each in default to undergo S.I. for six months, they have convicted for the offence punishable under Section 3 of the Immoral Traffic (Prevention) Act, 1956 (for short, PITA Act”) and sentenced to suffer R.I. for six months and fine of Rs.1,000/- each in default to undergo S.I. for one month, they have also been convicted for the offence punishable under Section 4 of the PITA Act and sentenced to suffer R.I. for six months and fine of Rs.1,000/- each in default to undergo S.I. for one month, for the offence punishable under Section 5 of PITA Act, the applicants have been sentenced to suffer R.I. for three years and fine of Rs.1,000/- each in default to undergo S.I. for one month and for the offence punishable under Section 6 of the PITA Act, sentenced to suffer R.I. for three years and fine of Rs.10,000/- each in default to undergo S.I. for six months by the Addl. Sessions Judge, Greater Mumbai in Sessions Case No. 582 of 2011 vide judgment and order dated 18.2.2016.

2. Heard the learned counsel for the applicants. Perused the evidence of PW-1 and PW-3.

3. Prima facie, it cannot be said that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt in respect of

the offence punishable under Section 366B of the Indian Penal Code.

4. It is a matter of record that PW-1 was not only a married woman, but had a daughter who was almost 7 years old at the time of recording of evidence. There are inherent inconsistencies in the substantive evidence of PW-1. It appears that the witness was not sure as to whether Anju had accompanied her to India and had stayed along with the victim at Kalyan and Dombivli. As far as trafficking is concerned, only evidence in respect of the trafficking is that PW-1 has stated that the accused had disclosed to her that they had purchased her for Rs.90,000/-. However, besides this disclosure, there is no other evidence. It is clear from the records and as verified by learned APP that there are no criminal antecedents as far as the appellant in Criminal Appeal No.172 of 2016 is concerned.

5. As far as the appellant in Criminal Appeal No.206 of 2016 is concerned, the learned APP submits that the appellant was an accused in Crime No.76 of 2010. She was charged for the offence punishable under Sections 3, 4, 5 and 7 of PITA Act by a judgment and order dated 2.5.2015 for the offence punishable under Sections 3, 5 and 7 of the PITA Act and was sentenced to rigorous imprisonment for two years for the offence

punishable under Section 4 of the PITA Act, R.I. for 3 years for the offence punishable under Section 5 of PITA Act and for 3 months for the offence punishable under Section 7(1)(b) of the PITA Act. She has filed an appeal before the Sessions Court and is on bail.

6. It is pertinent to note that this aspect was never brought to the notice of the learned Special Judge. Taking into consideration the quantum of sentence and that the sentence imposed upon the applicants is a short-term sentence, this Court is inclined to grant bail to the applicants.

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicants is hereby suspended.
- (iii) The applicants be enlarged on bail. Same bail, fresh bonds.
- (iv) The applicants shall report to the Court of Addl. Sessions Judge, Greater Mumbai, once in three months as directed by the learned Sessions Court.
- (v) In case of failure to attend the Sessions Court on any two

consecutive dates, the prosecution shall be at liberty to move for cancellation of bail.

(vi) Parties to act on an authenticated copy of this order.

Both the Applications are allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)