

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.194 OF 2021

Mohammad Umar s/o Mohammad Javed,
Age 25 years, Occupation Education,
R/o Near Afsara Bakery, 4-12-57/2,
Old Baijipura, Aurangabad,
At Present : National Colony,
Mahmoodpura, Near Alkari Masjid,
Aurangabad.

...Applicant

VERSUS

State of Maharashtra,
Through : Investigating Officer,
Begumpura Police Station,
Aurangabad.

...Respondent

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Advocate for Applicant : Mr. S. J. Salunke h/f Shaikh
Kayyum Najir.
Senior Counsel for Assist to APP : Mr. R. S. Deshmukh i/b
Advocate Mr. R. G. Joshi.
APP for Respondent-State : Mr. N. T. Bhagat.

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WITH
CRIMINAL APPLICATION NO.770 OF 2021
IN BAIL APPLICATION NO.194 OF 2021

Varsha Anil Tiwari @ Khatija Fatema,
Age 26 years, Occupation Household,
R/o Flat No.701, Kasliwal Marvel (E),
Satara Parisar, Beed By Pass Road,
Aurangabad.
At Present National Colony, Aurangabad.

...Applicant
(Orig.Informant)

VERSUS

- 1) Mohammad Umar s/o Mohammed Javed,
Age Major Yrs., Occupation Business,
R/o National Colony, Mahmoodpura,
Aurangabad.
- 2) State of Maharashtra,
Through Police Station Begumpura,
Aurangabad.

...Non Applicants

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Senior Counsel for Applicant : Mr. R. S. Deshmukh i/b
Advocate Mr. R. G. Joshi.

Advocate for Respondent No.1 : Mr. S. J. Salunke h/f
Shaikh Kayyum Najir.

APP for Respondent No.2-State : Mr. N. T. Bhagat.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 05-04-2021.

ORDER :

1. Criminal Application No.770 of 2021 has been filed by original informant for Assist to learned Additional Public Prosecutor.
2. The said application stands allowed and disposed of accordingly.
3. In Bail Application No.194 of 2021, the applicant came to be arrested on 02-10-2020 in connection with Crime No.303 of 2020, dated 01-10-2020, registered with Begumpura Police Station, Aurangabad, for the offences punishable under Section 376, 498-A,

323, 506 read with 34 of the Indian Penal Code and under Section 6 and 9 of the Immoral Traffic Act. He has been filed present application under Section 439 of Indian Penal Code.

4. Heard learned Advocate Mr. S. J. Salunke holdign for Mr. Shaikh Kayyum Najir, learned Senior Counsel Mr. R. S. Deshmukh instructed by Advocate Mr. R. G. Joshi and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State.

5. It has been submitted on behalf of the applicant that the applicant is the husband of the informant and still she has made allegations about rape and thereby invoking Section 376 of Indian Penal Code against the husband. In fact, the First Information Report has been falsely lodged just to harass the applicant and his family members. Prior to the alleged incident that is quoted in the First Information Report, accused Mohammad Ibrahim and Mohammod Ismail lodged non-cognizable complaint against informant for threatening them. Those non-cognizable reports were filed on 15-08-2020, 16-08-2020, 19-08-2020 and complaint dated 17-08-2020 and 21-08-2020. Thereafter, the present applicant had lodged suit for restitution of conjugal rights before Civil Judge, Senior Division, Parbhani bearing Regular Civil Suit No.133 of 2020

and that litigation is still pending. Now that domestic quarrel has been converted into a crime. There is unexplained inordinate delay in lodging the report. In fact the informant got married with applicant by adopting due procedure and had fully converted herself to Islam, affidavit to that effect was filed by her to which her own father was witness. The story that has been given in the prosecution case is highly improbable. There are contradictions and improvements in the statements of the witnesses under Section 161 and 164 of Code of Criminal Procedure are concerned. Now the investigation is over and charge-sheet is filed, therefore the custody of the present applicant is not longer required. The behaviour of the informant can be seen from the statement of her ex-boyfriend and one witness. Medical report is not supporting the case of the prosecution. There is no specific name of the persons with whom she was forcibly asked to have sexual intercourse thereby importing the offences under the Immoral Traffic Act. Co-accused Mohammad Javed, Rehana Begum, Ahmad Abdul and Abdul Noor have been released on anticipatory bail whereas Mohammad Ismail has been released on regular bail. Under such circumstances when two more accused persons are shown to be absconding, the further physical custody of the applicant is not required, he therefore, be released on

bail.

6. Per contra, the learned Additional Public Prosecutor well supported by learned Senior Counsel Mr. R. S. Deshmukh strongly objected the application and submitted that one of the heinous crime that has been committed by the husband who was in fact has duty, legal as well as moral, to protect the person and self esteem of the wife, had forced her to act like a prostitute. This has been done with a specific design. She was harassed by the present applicant to such an extent that she was forced to marry him. He had committed rape on her prior to the marriage, and by giving threats that the said video would be made viral, a proposal was then put before her that she should marry with applicant by converting herself to Islam. She was converted forcibly and, therefore, it cannot be said that she had willingly performed marriage with the applicant. The maternal uncle of the present applicant and his wife had forced her to sleep with a person from whom they had taken amount, and when she had refused, the present applicant had assaulted her. Thereafter, the maternal aunt of the applicant used to bring customers for her and she was forced to be in the flesh trade. At earlier point of time she had lodged the report but she had not disclosed the said offence

with her, it was with a hope that she will not be forced to do any illegal activity in future. But thereafter when she was pregnant, even at that time she was harassed, she was driven out of the house. When the present applicant had gone missing, she had gone to reside with her parents. But when she visited the house, she found that the lock was open and her articles including ornaments were missing. When she made inquiry with the present applicant, she was assaulted, and that has led her to lodge the report in detail. There are statements of witnesses showing as to how she was harassed by the present applicant and co-accused persons. The allegations are serious and taking into consideration the behaviour of the applicant, there is threat to the life of the informant and, therefore, the applicant need not be released on bail.

7. At the outset, it is unfortunate that a wife is required to lodge such kind of report against the husband. The informant has given details as to how the present applicant contacted her and by pretending that he want to have friendship used to harass her by giving phone calls. Thereafter, once he had committed rape on her and she had lodged offence against him and his maternal uncles with Satara Police Station. She also states that applicant's mother,

maternal uncles and aunt had gone to her house and tried to force her to marry with applicant by converting herself into Islam, she refused, but then she was threatened that the video would be made viral. She was forcibly converted to Islam and affidavit was taken from her about the same. She states that, thereafter she started residing with the applicant at National Colony, but thereafter the uncle and aunt of the applicant had forced her to sleep with some customers which they had brought, and when she refused, she was beaten by the present applicant. With such kind of seriousness in the allegations and the fact that the witnesses are also supporting her to some extent in a sense that they have told about the fact which was in their knowledge and what was communicated to them by the present applicant i.e. the immediate disclosures those were made. Therefore, when there is prima facie evidence against the present applicant and the heinous crime that is stated to have been committed with the story that has been told, the applicant does not deserve to be released on bail. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-