

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1557 OF 2020

**SHAHROUKH KHILAFAT KHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. R.P. Phatke, Advocate h/f Mr. R.M. Sharma, Advocate for applicants
Mr. S.Y. Mahajan, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30th JANUARY, 2021.

ORDER :

1 Both the applicants have been arrested by M.I.D.C., Waluj Police Station, Dist. Aurangabad in Crime No.481/2019 dated 04.07.2019, for the offence punishable under Section 376(2)(f)(n), 323, 504, 506 read with Section 34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. R.P. Phatke holding for learned Advocate Mr. R.M. Sharma for applicants and learned APP Mr. S.Y. Mahajan for respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 At the outset, it can be said that since the investigation is over and charge sheet is filed, the custody of the present applicants is not required for the purpose of investigation. Under such circumstance, it is required to be seen, what evidence has been collected against the present applicants. The informant is the 19 years old girl. The present applicants are stated to be her maternal uncles. They had brought the victim to the place where they had come to earn. She says that she was represented by the present applicants that they would give her work, since the financial position of her parents is very weak. It was represented to the landlord where the applicants were staying that the victim is the wife of applicant No.1. It is stated that both the applicants had committed rape on her. She says that it was against her wish and anyhow she could establish the contact with her parents. Father had come and then she lodged the report. It can be seen that the informant was residing in Uttar Pradesh. The applicants are also from Uttar Pradesh and while bringing her they had not informed it to her parents and had not allowed her to talk with her parents. The applicants are not coming with the case that since there was any love affair between any of them and the victim, the victim had left the house on her own and came along with them. The medical report does not rule out the sexual intercourse. The statement of the landlord and landlady would show that the victim used to talk to them and she was involved in sale of clothes from house and it was

represented to them that she was the wife of applicant No.1. If the applicants want to rely on these statements, even for the sake of bail, they have not given what was the date of marriage between the victim and the applicant No.1. Applicant No.1 has not come with a case that he is the husband of the victim. Even at the stage of bail, we will have to consider that the girl, who was then 18-19 years of age had come all the way from Uttar Pradesh to Aurangabad district in Maharashtra, then whether she had enough security to disclose the incidences, which were happening with her to the neighbours, is a question. Further, taking into consideration the relationship she could not disclose it to the neighbours also. The applicants are not coming with a case that any such incident took place, which turned to enmity and then the false implication. Therefore, when no circumstance has been shown to exercise the discretion; it cannot be exercised merely on the basis of some isolated facts. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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