

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 926 of 2020
IN
CRIMINAL APPEAL NO. 291 of 2020**

Shaila Anil @ Anugam Lankeshwar	..Applicant.
Versus	
The State of Maharashtra & Anr.	..Respondents

Ms. Rekha Musale for Applicant.
Smt. J. S. Lohokare, APP for State/Respondent No.1.
Mr. Rupesh Bobade, appointed advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 3rd AUGUST 2022

PC :

1. Heard learned counsel Ms. Rekha Musale for the Applicant, learned APP Smt. Lohokare, for the State/Respondent No.1 and Mr. Rupesh Bobade, appointed advocate for the Respondent No.2.

2. The Applicant was the original accused No.1 in Sessions Case No.4 of 2018 before the Ad-hoc Sessions Judge, Barshi. There were three accused in all. The accused No.2 was husband of the applicant. He is acquitted of all the charges. The main accused i.e. accused No.3. was convicted for commission of offence punishable

U/s.376 of I.P.C. and was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1000/- and in default to undergo R.I. for six months. The present applicant i.e. accused No.1 was convicted for commission of offence punishable U/s.109 r/w. Section 376 of IPC. She was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1000/- and in default to suffer R.I. for 6 months. She was also convicted for commission of offence punishable U/s.366 of IPC and was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1000/- and in default to suffer R.I. for 6 months.

3. The prosecution case is that, the first informant was 38 years old lady. She has a son and two daughters. Her daughters are already married. Her husband had expired 10 to 12 years prior to lodging of F.I.R. On 04/09/2017 she was taken by the applicant and her husband to village Pimpri and she was forced to marry applicant's brother in law. Thereafter she was forced to establish physical relations with him and therefore this F.I.R. was lodged.

4. Learned counsel for the Appellant submitted that the victim was an adult. She had two daughters and a son. She was

taken to the village to marry the applicant's brother in law. However, she had not raised any objection from 04/09/2017 to 12/09/2017. Her evidence shows that there were houses around the house of main accused No.3 but she did not seek anybody's help. This clearly indicates that she was a consenting party and there was no force involved. In any case, the applicant had only taken her to the accused No.3 and the prosecutrix knew that the marriage was to be performed between her and accused No.3. Therefore, even offence U/s.366 of IPC is not proved against the applicant.

5. Learned counsel for the Respondent No.2 victim, as well as, learned APP opposed this application for bail pending the hearing of appeal. They submitted that the applicant had forcibly taken the victim to the house of accused No.3 and thereafter this offence U/s.376 of IPC was committed. She herself was a lady and she should have understood the effect of the offence. Therefore, considering the nature of offence, she does not deserve to be released on bail.

6. I have considered these submissions and in particular I have perused the deposition of the victim who is examined as PW-1 in the trial. She has stated that, on 04/09/2017 the applicant asked her to marry accused No.3. The applicant then took her to village Pimpri. The applicant purchased *saree, blouse, painjan* and *mangalsutra*. Then they went to accused No.3. It is her case that, the applicant and others forced her to garland accused No.3 and then applicant forced her to sleep with the accused No.3. However, in the cross-examination, she was pointed out her F.I.R. wherein the allegations that applicant used force on her were missing.

7. The Investigating officer has also deposed that the victim had not stated in the F.I.R. that the applicant had forcibly taken her to the village Pimpri. It was also not mentioned in the F.I.R. that the accused forced her to garland accused No.3. Significantly, it is also not mentioned in the F.I.R. that the applicant had forced the victim to sleep with accused No.3. Even other prosecution witness PW-2 had not mentioned before the police that the victim had told her that the applicant had forced the victim to garland

accused No.3 or that she was forcibly confined in one room. All these important admissions by the prosecution witnesses throw doubt on the prosecution case. The applicant is a lady. She has a three year old daughter. The appeal is not likely to be taken up for final hearing in a reasonable period. Therefore, the applicant has made out a case for her release on bail during pendency and final disposal of appeal.

8. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.291 of 2020, the applicant be released on bail on her furnishing P.R. Bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The application is disposed of.

(SARANG V. KOTWAL, J.)