

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

931 BAIL APPLICATION NO.806 OF 2023
WITH APPLN/2076/2023 IN BA/806/2023

SHABANA HARUN KHAN @ SHABANA HARUN PATHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. S. Jadhav h/f Mr. Dhawale
Bhushan S., Mr. Shaikh Jammu A. Rahimsab.
APP for Respondent-State : Ms. V. N. Patil-Jadhav.
Advocate for Victim to assist APP : Mr. Shaikh Shermahmed K.

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CORAM : S. G. MEHARE, J.
DATE : 14.06.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the victim.
2. The applicant is seeking bail in Crime No.55 of 2023, registered at Cantonment Police Station, District Aurangabad, for the offences punishable under Sections 370, 376(2)(n), 323, 504, 506, 201 read with Section 34 of the IPC.
3. The victim made the allegations that under the promise to provide her job, she was taken to Jodhpur. The applicant, her husband and one third person took her to Jodhpur by car. As per the FIR, she was taken to Jodhpur on 19.11.2022 and she

lodged the report on 08.02.2023. She alleged that she was forced to do sex with the unknown persons. Under the garb of marriage, she was sold to two persons for Rs.80,000/-. However, she flee away from that place on 03.02.2023.

4. Learned counsel for the applicant would submit that there was no evidence against the husband of the applicant that he committed sex. As far as the allegations against the applicant is concerned, he would argue that the victim was never forced to do sex. She was living with them voluntarily. Out of the income, she had sent Rs.20,000/- to her son by phone pay in the account of one medical shop owner, whose statement is on record. He would also argue that when the victim left for Aurangabad, she had no money to pay the fare to the truck driver. So she asked the applicant to send Rs.12,000/- on the account of truck driver by phone pay. The applicant sent Rs.12,000/- to the said truck driver as per the instructions of the victim. In nutshell, he would argue that the victim was never forced to come at Jodhpur. She was never sold to anybody under the garb of marriage. However, to extract the money, she has concocted the story and lodged the false report. The maximum punishment for the offence under

Section 370 is three years that may extend to five years. On this count, she claimed the bail.

5. Per contra, learned APP strongly opposed the application. She would argue that there is ample material against the applicant to show that victim was taken to Jodhpur under the promise to provide her a job, but she was forced to the sex with unknown persons. The offence is serious. Hence, bail may not be granted.

6. Learned counsel for the victim has adopted the arguments advanced by the learned APP and in addition thereto, he would argue that there is possibility of tampering with the prosecution witnesses.

7. Perused the papers. There appears substance in the submissions of the learned counsel for the applicant that when the victim was there at Jodhpur, she never resisted nor attempted to flee away. Out of the income, she sent Rs.20,000/- for her son and thereafter her son lodged a missing report. Considering the allegations and the investigation papers, there is a ground to believe the case of the applicant that she never forced the victim to involve in the sexual activities. She returned home at her own and the applicant paid her Rs.12,000/- to travel from Jodhpur to

Aurangabad. The investigation has been completed. Nothing is to be recovered from the applicant. Considering the length of the conviction, it would be inappropriate to keep her behind bar. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **SHABANA HARUN KHAN @ SHABANA HARUN PATHAN** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.55 of 2023, registered at Cantonment Police Station, District Aurangabad, for the offences punishable under Sections 370, 376(2)(n), 323, 504, 506, 201 read with Section 34 of the IPC, on the following conditions :
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) She shall not contact the victim or her relatives in any mode or manner till conclusion of the trial.
 - (c) She shall not leave Aurangabad without intimation to the Investigating Officer.

- (d) She shall attend the trial on each and every effective date.
- (iii) Criminal application No.2076 of 2023 to assist the learned APP is allowed.

(S. G. MEHARE, J.)

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vmk/-