



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 584 OF 2023

APPELLANT:

Sonal w/o Sanjay Aradhye,
Aged 33 years, Occu: Labour,
R/o C-402, Sai Residency, Dindoli,
Karvada Road, Surat City, Dist. Surat
(Gujarat)

...V E R S U S...

RESPONDENTS

- 1] State of Maharashtra,
through PSO Arvi,
Tah. Arvi, District Wardha.
- 2] Complainant in FIR No. 257/2019
Registered at PS Arvi, Tah. Arvi,
Dist. Wardha.

Corrected as per
Court's order dated
12/12/2023.

Mr. A.M. Jaltare, counsel for the appellant.
Mrs. D.I. Charlewar, APP for the respondent No.1.
Ms. C.S. Bhute, Counsel (appointed) for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 06/12/2023

ORAL JUDGMENT :

1. Heard finally with the consent of the learned
counsel appearing for the parties.
2. **Admit.**
3. By preferring this appeal, the appellant has

challenged the order passed by the Additional Sessions Judge and Special Judge (POCSO Act), Wardha, rejecting the application for grant of bail under Section 439 of the Cr.P.C. in Special Case No. 179/2020 dated 16/08/2023.

4. The present appellant is arrested on 29/10/2022. The accusations are made against her on the basis of report lodged by Arvi Police Station, District Wardha on 27/03/2019 for the offences punishable under Sections 363, 366(a), 370, 376(2)(n), 254, 354(b), 323, 506 read with 34 of the Indian Penal Code, Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 2015, Section 4, 6, 8 of the Protection of Children from Sexual Offences Act, Sections, 4,5 and 6 of the Immoral Traffic Prevention Act. It is alleged in the report that on 26/03/2019, the informant had been to attend work with her parents, and her minor daughter was alone at the house. When the informant returned at about 7.30 p.m., at that time her daughter was not present in the house. On such, the daughter of the complainant was not found, therefore, she approached the Police Station and lodged the FIR.

5. After registration of crime and during the investigation, it revealed that victim went at Surat, therefore, the police machinaries have searched the victim at Surat and victim was brought back to Arvi, District Wardha. During the statement of the victim, it is alleged that victim came in

contact with one Durgadevi and one Punam Khanna. The said Punam Khanna induced her and therefore, victim went along with her. Victim was sold and was used for human trafficking. On the basis of the said report, the Police have registered the crime against the co-accused. During the investigation, it further revealed that present appellant was present in the same building, wherein the victim was kept by the other co-accused.

6. Learned counsel for the appellant submitted that mere allegation against the present appellant is that the victim was taken at Surat, wherein the present appellant was kept one building. Except this allegations, nothing is on record to connect the present appellant with the alleged offence. Learned Counsel Mr. A.M. Jaltare invited my attention towards the statement of the victim recorded under Sections 164 and 161 of the Cr.PC and submitted that both the statements nowhere refers the name of the victim and no allegations are made against the victim.

7. After filing of the charge-sheet, the evidence of the victim was recorded and during the evidence also, victim has not narrated anything about the role of the present appellant. During cross-examination, victim specifically stated that she has identified the present appellant, only on the say of the Police. Now investigation is completed, charge-sheet is filed and trial is also in progress, further

custodial interrogation of the present appellant is not required.

8. He further submitted that present appellant is having two small children, her husband is also prosecuted for the same offence. Considering the same, she be released on bail.

9. Mrs. D.I. Charlewar, learned APP strongly opposed the present application on the ground that the offence is of serious nature. Minor girl was used for human trafficking. She was not only taken by the co-accused but she was handed over to the third person, who have sexually assaulted the victim. The husband of co-accused also ill-treated the victim. Considering the nature of the offence and the circumstances under which, the victim was left, the criminal application deserves to be rejected.

10. Ms. C.S. Bhute, learned appointed counsel for the victim also reiterated the same contention and opposed the present application.

11. Heard learned counsel for the appellant, learned APP for the State and learned appointed counsel for the victim. Perused the entire investigation papers including the statement of the victim recorded under Sections 164 and 161 of the Cr.P.C.. On perusal of both the statements, admittedly the name of the present appellant is nowhere referred in the statement of the victim i.e. either in the statement under

Sections 164 and Section 161 of the Cr.P.C.. Though she has identified the present appellant during the investigation period, admittedly, identification period is not a substantial evidence, and during cross-examination, she specifically admitted that she has identified the present appellant as Police have asked her to identify.

12. The record further shows that the husband of the present appellant is also behind bar in the said crime. The two small children are dependent on the present appellant and there is nobody to look after them. Considering the material against the present appellant which only refers the name of the present appellant as she was present in the building wherein the victim was kept. No other material is placed on record by the prosecution to show her connection in the alleged offence, her prayer for bail can be considered. In view of that the criminal application deserves to be allowed. Accordingly, I proceed to pass following order.

- a) The criminal appeal is **allowed**.
- b) The appellant is released on bail in connection with Crime No.257/2019 for the offences punishable under Sections 363, 366(a), 370, 376(2)(n), 254, 354(b), 323, 506 read with 34 of the Indian Penal Code, Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 2015, Section 4, 6,

8 of the Protection of Children from Sexual Offences Act, Sections, 4,5 and 6 of the Immoral Traffic Prevention Act, on executing PR. Bond of Rs. 25,000/- with one local surety in the like amount.

- c) The appellant shall not leave the jurisdiction of the Tahsil Arvi, District Wardha without prior permission of the learned Trial Court.
- d) The appellant shall furnish her cell phone number and address with address proof before the learned trial Court.
- e) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- f) Fees of the learned appointed counsel for the respondent No.2 is quantified as per the Rules.

Criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J]