

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4266 OF 2015

Sayed Mukram s/o Syed Maula,
Age : 29 yrs, Occu. Labour,
R/o Umerkhed, Tq. Umerkhed,
District Yavatmal

..APPLICANT

VERSUS

The State of Maharashtra,
through Shivaji Nagar Police Station,
Nanded

..RESPONDENT

Mr P.V. Mandlik, Senior Advocate, i/by Mr Pratap Mandlik, Advocate for
applicant;
Mr S.R. Palnitkar, Addl. Public Prosecutor for respondent;
Mr M.V. Ghatge, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 28th August, 2015

ORAL ORDER :

By the instant application under section 439 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with C.R. No. 52 of 2014, registered with Shivaji Nagar Police Station, Nanded, for offences punishable under sections 376, 406, 312, 313, 315, 294, 506 read with sec. 34 of the Indian Penal Code.

2. Heard Mr P.V. Mandlik, learned Senior Counsel appearing on behalf of the applicant; Mr S.R. Palnitkar, learned Public Prosecutor on behalf of

the respondent and Mr M.V. Ghatge, learned Counsel appearing on behalf of the complainant.

3. The case of the prosecution, in a narrow compass, is as under :-

The applicant, along with his family members, is alleged to be an accused in C.R. No. 52 of 2014, registered with Shivaji Nagar Police Station, Nanded, for offences punishable under sections 376, 406, 312, 313, 315, 294, 506 read with sec. 34 of the Indian Penal Code.

4. The applicant and complainant, were known to each other since last couple of years and same has resulted into their physical relationship.

5. The complainant alleged that, upon promise by the present applicant, complainant Farhana had permitted him to establish physical relationship and out of which, thrice she carried pregnancy, which was terminated on the assurance of marriage given by the applicant and his family members. It is subsequently disclosed that the parties hereto entered into a settlement and the applicant got married with the complainant on 30th March, 2014. Pursuant to said marriage and settlement deed, the complainant appears to have given no objection before Sessions Court for releasing some of the accused on bail.

6. It is further the case of the prosecution that the applicant, in view of above referred settlement, was released on interim pre-arrest bail and taking advantage of the said situation, the complainant was driven out of her matrimonial house.

7. The Investigating Officer has seized three empty containers of pills from the custody of the complainant, which were used for termination of pregnancy of complainant.

8. In the above referred background, the applicant was arrested on 8th April, 2015 and the charge-sheet in the matter has been filed on 9th June, 2015.

9. Learned Senior Counsel appearing on behalf of the applicant would urge following grounds for grant of regular bail :-

(a) In view of the marriage of the applicant with the complainant on 30th March, 2014 and the settlement dated 30th April, 2014, the applicant is entitled to be released on regular bail, particularly when the investigation in the matter is complete and charge-sheet is filed;

(b) the interest of the complainant was already protected by

executing Hibanama on 31st March, 2014, whereby some immovable property was given to her and dispute in the present matter is matrimonial and not criminal. The custody is no more required.

10. Learned Senior Counsel has also invited my attention to the statement of Kazi, who has performed the marriage in question, for which the applicant herein has parted amount of Rs.7786/- towards mehar. He then urged that there is no medical evidence on record to conclude that the complainant was carrying pregnancy from the present applicant, as she had refused to co-operate with the investigating agency in the matter of carrying out appropriate medical examination. In the above background, he has sought release of the applicant on regular bail.

11. If the above referred submissions of the present applicant are considered, the evident conclusion appears to be that the applicant herein has married with the complainant in the background of threats *inter*, i.e. the complainant carrying pregnancy from the present applicant.

12. It is also required to be noted that the settlement and the terms thereof speaks of already agreed marriage and prior thereto the physical relationship of the present applicant with the complainant. Once it is evident that the applicant herein had promised the complainant of

marriage and established physical relationship with her, subsequent to the marriage, but marriage was sought to be used for the purpose of securing his pre-arrest bail. It is not in dispute that the complainant is not residing with the applicant and has been driven away.

13. In the above referred background, the material brought on record *prima facie* demonstrates involvement of the present applicant in the commission of the crime, which is serious in nature. Thus, the Criminal Application fails and stands dismissed.

(N.W. SAMBRE, J.)

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