

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Dayaram Jaisy Nishad	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

CORAM : REVATI MOHITE DERE, J.
DATED : 6th APRIL, 2015.

1. Heard the learned counsel for the Applicant, and the learned APP
for the Respondent - State.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I 79 of 2014 registered with the Bhayander Police Station, Thane, for the alleged offences punishable under Sections 498-A, 307, 376, 323 and 506 of the Indian Penal Code.

3. The applicant is the father-in-law of the complainant. The son of the applicant was married to the complainant on 16th May, 2013 and the alleged incident is stated to have taken place on 23rd September, 2013. In

the incident that took place on 23rd September, 2013, the complainant sustained 40% burns. Soon after the incident, the neighbours gathered on hearing the hues and cries of the complainant, after which the complainant was taken to a private hospital by her husband, the present applicant and others. Soon after the incident, when the neighbours, including the station house employee and police constable entered the premises, all of them have stated that the history given by the complainant, was that she had sustained burn injuries, due to blast of a stove. They have stated that when they entered the house, the complainant's husband and one Rekha were pouring water on her person and extinguishing the fire. Soon after the incident the complainant was admitted to a private hospital, where the complainant had given history of having sustained burn injuries due to blast of a stove. The statement of the complainant was again recorded on 26th September, 2013, by the PSI, wherein, the complainant had again disclosed that the incident took place on 23rd September, 2013, when she was making tea on the stove, and as a result of stove blast she sustained burn injuries. In the said statement made to the PSI, the complainant had disclosed that at the relevant time her husband was in the bathroom and on hearing her cries, he came and immediately poured water on her

person and tried to extinguish the fire and took her to a private hospital. It also appears that from the private hospital, the complainant was taken to the Life Line Hospital and as proper treatment was not available at the Life Line Hospital, the complainant was brought to Nair Hospital for further treatment. It appears, that after the complainant was discharged from the hospital, she went to her parental house and for the first time on 31st December, 2013, she has alleged the aforesaid offences as against the present applicant and all the family members, including the juvenile sister-in-law, aged 13 years and brother-in-law, aged 19 years. The said complaint was made by the complainant at Uttar Pradesh and was subsequently registered as an FIR only in April, 2014, at Mumbai.

4. Learned Counsel for the Applicant contended that the statement of the complainant made to the PSI which was given by her, on her own accord, in the hospital and the disclosure made by the complainant, soon after the incident to her neighbours, including the station house employee and police constable and others, clearly reveals that the complainant had sustained accidental burn injuries and that the applicant no.1 was alone at home and had extinguished the fire. He submitted that only subsequently, a false complaint was registered as against the present applicant and other

family members, including the juvenile sister-in-law, aged 13 years and brother-in-law, aged 19 years. He submitted that the allegations alleging rape, as against the present applicant are false and fabricated. He submitted that the said allegation of rape was being made for the first time by the complainant in December, 2013, i.e. almost after 4 months of the incident.

5. Perused the charge-sheet, the statements of the witnesses, medical certificates and all other relevant documents. Prima-facie, from the statement of the witnesses, it clearly appears that at the relevant time, only the applicant's son was present in the house and had extinguished the fire. Prima-facie, it is also evident that the complainant had disclosed to the witnesses that she had sustained accidental burn injuries, due to blast of stove and that the applicant's son, had extinguished the fire on her person. Infact, the statement of the witnesses also reveals that apart from the applicant's son, none of the co-accused were present at the spot. Infact, the statement of the school authorities, which was recorded during investigation reveals that the juvenile accused i.e. sister-in-law, aged 13 years was present at the school, at the relevant time when the alleged incident took place. However, inspite of that the juvenile sister-in-law has

also been arrayed as an accused in the said case. Infact this Court (Coram:Revati Mohite Dere,J.) while granting bail to the applicant's son i.e. the complainant's husband and brother-in-law in Criminal Bail Application No.161 of 2015, had made certain observations with regard to the manner in which the investigation had been conducted in the present case, more particularly, in the light of the material, that had come on record, during investigation. Infact, in para 8 of the said order dated 12th March, 2015, passed in Criminal Bail Application No.161 of 2015, this Court had observed as under :-

“8. Considering the manner in which this case has been handled, in light of the evidence that has come on record, it would be appropriate that the Superintendent of Police, Thane (Rural), looks into the matter, to ensure not only fairness and impartiality in conducting investigation, but also taking the cases to its logical end, in cases like this, in future.”

6. Prima-facie, considering the material on record, the Applicant deserves to be enlarged on bail on the following terms and conditions ;

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount ;

- ii) The Applicant shall report to the Bhayander Police Station, Thane, on first Saturday of every month, between 10.00 a.m. to 11.00 a.m., till the conclusion of the trial ;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Bhayander Police Station, Thane ;
- iv) The Applicant shall not tamper or attempt to influence any persons/witnesses, concerned with the case ;
- v) The Applicant shall co-operate in the conduct of the trial.

7. The Application is allowed and disposed of in above terms.

8. Needless to observe, that the learned Judge shall decide the case on its own merits, uninfluenced by the observations made in this order.

9. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)