

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 819 OF 2015

Akshay Chandrakant Shah	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr.M.S. Mohite, Advocate,for the applicant.

Ms. R.M.Gadhvi, APP, for the State.

Mr. Raghunath S. Kalake, PSI, Mira Road Police Station.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 26th June, 2015.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 12.4.2014 in Crime No.182 of 2014 registered at Mira Road Police Station under Sections 376, 420,326A, 109 read with Section 34 of IPC on 11.4.2014. The investigation is completed and charge sheet is filed on 21.6.2014.

2(a) It is the case of the prosecution that on 11.4.2014, the prosecutrix lodged a report at the police station alleging therein that some time in the year 2009, she had met the present applicant in Hukka Parlour at Kandivli. Thereafter they were well acquainted with each other. Their friendship had culminated into love. According to the complainant, initially the applicant had disclosed his name as Moksh. Subsequently, she had learnt his name was Akshay. It appears from the recitals of the FIR that the

complainant and the applicant were in love. The applicant had allegedly proposed to marry with her. Subsequently, she learnt that he was already a married man. She has then alleged that after she learnt about his first marriage, he had assured that he would divorce his first wife and get married to her. In the interregnum, they had visited several hotels and had consensual sexual intercourse. According to the complainant, on the ground of false pretext of marrying her after divorcing his first wife, he had sexual intercourse with her against her wish.

(b) She has further alleged that on 7.4.2014, the friend of the present applicant had thrown acid on her face. The applicant had taken her to Bhakti Vedanta Hospital. The complainant had called upon her friend Bhoomi. Thereafter, the applicant had left the hospital on the ground of making payment. She has further stated that she was treated as an Indoor patient for about 2-3 days. She has further alleged that in fact on 5.4.2014, she had severed her relations with the applicant. However, she had met him on 7.4.2014. According to the complainant, she was cheated by the applicant. On the basis of her report, offence was registered and investigation was set in motion.

3. In the course of investigation, the Investigating Officer has recorded statement of the friend of the complainant, namely, Bhoomi. As far as the

incident dated 7.4.2014 is concerned, Bhoomi disclosed to the police that the applicant had called her to the hospital. That she had enquired with the complainant who had disclosed to her that some person had come from behind her and had thrown acid on her head. In the course of investigation, the complainant has given a certificate issued by Bhakti Vedanta Hospital dated 14.5.2014 which shows that the complainant was treated in the said hospital as she had minor facial burns approximately 4 to 5 per cent. She was treated as an OPD patient and MLC form was handed for giving to the police. The burns were due to some chemical thrown on the face. The burns are superficial in nature on initial examination. The said certificate shows that she was brought to the hospital by her boy friend. The history given by the victim is “some unknown liquid was thrown on face and body of unknown person this afternoon while she was going to her relative's house”. It appears that there were burn marks on her face, eye-lids back. The scene of incident was shown as near Poonam Sagar Complex. It further shows that she was treated as an Outdoor Patient by Dr. Sarang. She was also given MLC. It is not known as to why the said MLC was not given to the police before 11.4.2014. In any case, the allegation is that the person who had thrown acid was the friend of the present applicant. No test identification parade is held. There is nothing in the compilation of

charge sheet to even remotely indicate that the present applicant is involved in the incident dated 7.4.2014 since he was the person who had taken her to the hospital and made all arrangements including calling upon her friends and relatives. It prima facie appears that after registration of offence, to corroborate her allegations, the complainant had furnished the said certificate. It is not alleged that it was the present applicant who had thrown the said acid. There is neither anything on record to show that the said incident dated 7.4.2014 is at the behest of the applicant.

4. The complainant has stated in the FIR that she had severed her relations on 5.4.2014. However, on 7.4.2014, she had been to meet the present applicant along with her maternal cousin aged about 3 years. She had been in the Honda City car of the present applicant. While he was driving the said car, one person had thrown some chemical on her head and therefore, she had sustained injuries on her forehead and face. She has also specifically stated that upon her hue and cry, the present applicant had alighted from the car and had taken her to the hospital. The papers of investigation would show that the complainant and the applicant had good relations even on 7.4.2014. The investigation is completed and charge sheet is filed. The complainant is in jail for more than one year and in these premises, he deserves to be enlarged on bail.

5. The co-accused shall not claim parity with the present applicant and his application will be decided on its own merits.

6. The observations hereinabove are prima facie in nature and shall not be considered while deciding quashing of FIR, discharge application or at the time of trial.

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(iii) The applicant shall report to the concerned police station on first Sunday of each month till conclusion of the trial.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)