

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1113 OF 2015

Babu Hasan Shaikh. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. A.H.H. Ponda i/b. Mr. Ram Mani Upadhyay, advocate for Applicant.

Mr. M.A. Khan, advocate for respondent No. 2.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 9, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the respondent No. 2 and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 24th May, 2015 in Crime No. 146 of 2015 registered at Koparkhairane Police Station

for offence punishable under Section 376, 420, 506 of the Indian Penal Code.

3 It is the case of the prosecution that on 24th May, 2015 prosecutrix lodged report at the police station contending therein that she is a divorcee having a son aged 12 years old. She is running beauty parlour at Bandra. According to her, in December, 2014 she alongwith her mother had gone to Koperkhairane for purchasing a flat. They had visited a building under construction. They met one person at the said plot, who had shown them Flat No. 101 at Khairanegaon. The price was negotiated to Rs. 10 Lakhs. The said person had disclosed his identity as Babu Hasan Shaikh (Babu builder). From time to time she had paid Rs. 2,35,000/- to the applicant. They had got acquainted to each other. The acquaintance had developed into love. According to the complainant, the applicant had assured her that he would marry her. Thereafter, she had accompanied him to Khandala. They had visited a resort. According to the complainant, he had ravished her at the said resort. She has

further alleged that she had sexual intercourse with the applicant on several occasions. He had threatened her of dire consequences. On the basis of the said report, Crime No. 146 of 2015 is registered.

4 Prima facie it appears that it is a case of consensual sex and when the relationship has gone sour, she has lodged report at the police station. The learned Counsel for the applicant submits that in fact, she has stated in the first information report itself that she had accompanied the applicant to various hotels. According to the learned Counsel, this is a relationship between two grown up mature people and it cannot be said to be an offence under Section 376 of the Indian Penal Code.

5 Taking into consideration the fact that the complainant was a mother of 12 years old child and divorcee aged about 32 years and that the applicant is 56 years old man with a family, this Court is inclined to grant bail.

6 It is made clear that the above observations are prima facie in nature. The same shall not be considered while deciding application for discharge or application for quashing of FIR or at the time of trial. The learned trial Court shall decide the matter uninfluenced by the observations made by this Court.

7 Hence, following order is passed.

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/- and one or two sureties in the like amount.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)