

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1921 OF 2016

Murlidhar Shivaji Mali.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Vaibhav Gaikwad, advocate for Applicant.

Mr. S. H. Yadav, APP for State.

Mr. Prakash Sawant, PI, Khandala Police Station.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 29, 2016**

P.C.:

1 Heard the learned Counsel for the applicant 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 15/5/2016 in Crime No. 59 of 2016 registered at Khandala Police Station for offence punishable under Section 376, 323, 506 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that the daughter-in-law of the present applicant lodged a report at the police station on 15/5/2016 alleging therein that she is residing alongwith her husband and in laws. It is contended that the applicant goes to agricultural land in the morning and returns at night. On 12/5/2016 the applicant had not taken his tiffin and therefore, her mother-in-law had asked her to take tiffin for her father-in-law. She served food to her father-in-law. At about 3 p.m. he had asked her to sweep room in the agricultural land. At that time he attempted to outrage her modesty. As she resisted, he had assaulted her on her thigh with handle of the axe and thereafter, had ravished her. She had informed her husband about the same. That her husband had asked her to forgive his father. On the next day, her brother-in-law who is not having cordial relationship with his father had questioned the complainant about the happening on the earlier day. She had informed her brother-in-law that the applicant had ravished her. Her brother-in-law had informed her parents about the same. They came to meet her immediately and

then report was lodged at the police station and the applicant is arrested.

4 The learned Counsel for the applicant submits that the complainant is a divorcee and she had been divorced by her first husband, as she was suffering from mental disequilibrium. That she was under treatment. The learned Counsel for the applicant has placed on record the certificates issued by the Regional Mental Hospital, Thane dated 3/6/2013. The report of the hospital shows that she was suffering from the said problem for the past 7 years. The history shows that she was quarreling with her first husband. She was divorced. She did not sleep at all. She used to damage the property at home. She had also started grumbling, quarreling, abusing and assaulting. She was suspecting her sister. She would not take bath for 2 to 3 days. The report shows the signs of disturbed mental equilibrium. This Court had directed the learned APP to ask the investigating agency to verify the genuineness of the certificate. It is reported that the complainant is rather a patient of Psychosis.

5 Perused the papers of investigation. It appears that there was quarrel between the brother-in-law of the complainant i.e. elder son of the applicant and the applicant and that taking advantage of the Psychotic nature of the complainant, the elder son of the applicant had given information to the parents of the complainant that the complainant has been ravished by the present applicant. Upon perusal of the statement of the brother-in-law of the complainant it appears that on the said date the complainant was in the house. The door was closed. The elder son of the applicant had seen the applicant coming out of the house and had presumed that she had been ravished. The learned Counsel for the applicant submits that the elder son had influenced the complainant to implicate the applicant.

6 Be that as it may, the applicant is about 65 years old. The investigation is completed. Charge-sheet is filed. The victim is not residing in her matrimonial house. It is also submitted that the applicant is suffering from old age ailments and has become infirm

and is reported to be sick in jail. By virtue of the proviso to section 437 of the Code of Criminal Procedure, 1973, the applicant deserves to be enlarged on bail.

7 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same while deciding the application for discharge or quashing of FIR or at the time of trial.

8 Hence, the 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 more sureties in the like amount.

(iii) The applicant shall report to the concerned police station as and when called by the Investigating Officer and make himself available at the time of trial.

(iv) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)