

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1645 OF 2015

Mohd Imran Ali Rizwan Shaikh ... Applicant
vs.
The State of Maharashtra and Another ... Respondents

Mr. Saeed Ahmed Hussain Shaikh, for the Applicant.
Mrs. S.S. Kaushik, APP for Respondent – State.
Mrs. Nasreen S.K. Ayubi, for Respondent No. 3.
Mr. Jaipatre (PSI), Nalasopara police station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **22nd MARCH, 2016**

P.C.:

. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 376 and 506 of the Indian Penal Code and under Sections 3 and 4 of the Prevention of Children from Sexual Assault Act in C.R. No. I-258 of 2015 registered with Nalasopara police station, Dist. Palghar. The offence is registered at the instance of Kum. Humera Shaikh on 6th September, 2015.

2. It is the case of the prosecution that at the time of the incident which is taken place in December, 2014, the prosecutrix was

16 years of old. She ha friendly relations with applicant/accused. The acquaintance between them turned into love and therefore the applicant/accused took the prosecutrix to his house and promised her to marry. Then the applicant/accused have forcible sexual intercourse with her. It is the case of the prosecutrix that thereafter on February, 2015 and in July, 2015 again the applicant called her to his house at Nalasopara and threatened her that he is having her photographs and he would circulate it in the public and thereafter he had sexual intercourse with her. Thus the applicant obtained her consent by fraud and had physical relationship with the prosecutrix. Therefore, she gave complaint to the police station.

3. The learned counsel for the applicant/accused submitted that the applicant/accused is innocent. He is 19 years old boy who was in love with the complainant. He submitted that the allegations made by the complainant are false.

4. The learned prosecutor as well as the learned counsel for the complainant opposed this application. They submitted that the girl was minor when the incident of rape has taken place. The threats

about the circulation of her photographs was given by the applicant/accused to her. Thus her consent for sexual intercourse was obtained forcibly. Thus, the applicant/accused has committed offence of rape. Hence, the application be allowed.

5. Perused the first information report and the forensic lab report in respect of call records of the cell phone of the applicant. It appears that nothing incriminating was found in the said report. It is true that the complainant in December, 2014 was 16 years old. However, after going through the contents and the allegations made against the applicant/accused, it is clear case which shows that the applicant/accused and complainant were in love and they indulged into sex. The applicant/accused is not illiterate. She was taking education of Neuropathology. She was in the age of understanding the consequences of her act and therefore, I am inclined to grant pre arrest bail to the applicant/accused on the following terms and conditions:

- a) In the event of arrest, the applicant/accused be enlarged on bail upon furnishing P. R. Bond in the sum of Rs. 20,000/- with one or two solvent sureties in the like amount;

- b) The applicant shall not tamper with the evidence;
- c) The applicant shall cooperate with the Investigating Officer and shall attend concerned police station, once in a week on every Monday between 6.00 pm to 7.00 pm, for three weeks.

6. Accordingly anticipatory bail application stands disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)