

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1366 OF 2016

Deepak Dharma Bhare	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONG WITH
INTERVENTIION APPLICATION NO. 1034 OF 2016

Preeti Ganesh Bhare	...	Intervener
In the matter between:		
Deepak Dharma Bhare	..	Applicant
vs.		
State of Maharashtra & Anr.		Respondents

Ms. Anjali Patil, Advocate for the applicant.
Mr. Satish Mishra, Advocate for the Intervener.
Ms. J.S.Lohokare, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 30th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.

The applicant herein is arrested on 21.4.2015 in Crime No.181 of 2015 registered at Mulund Police Station. The investigation is completed and charge-sheet is filed against the applicant in 3rd week of July,2015 for the offences punishable under Sections 376(2)(F), 506(2) of the Indian Penal Code.

2. The case of the prosecution is that the applicant herein happens to be the brother-in-law of the complainant Ms. "X" i.e. he happens to be the elder brother of the husband of the complainant.

3. On 21.4.2015, Ms. "X" lodged a report at the police station that she had got married to the brother of the applicant on 7.4.2013. It was a love marriage. It is alleged that even prior to the marriage, her husband was diagnosed with tuberculosis. she was residing with her husband on the first floor of the same building i.e. Amar Nagar, Darga Road, Muund. It is alleged that on 19.2.2014, the present applicant, on the ground of illness of his brother had requested his brother to stay with them and since then his younger brother i.e. husband of the complainant was residing with the applicant. It is alleged that the applicant was giving him treatment at a private hospital and had not informed the complainant about the illness of her husband or the mode of medical treatment extended to him. It is alleged that in the month of November, she had learnt from her neighbours that her husband is admitted in Sahyog Nursing Home at Ghatkopar and was not permitted to meet her husband. It is thereafter alleged that on 11.12.2014, the applicant herein had gone to the house of the complainant at about 2 a.m. She had opened the door as he happened to be her relative. It is alleged that she used to keep a knife below her pillow. He had seen the

knife and threatened her of dire consequences and had ravished her against her wish. She had initially raised a quarrel with him. It is further alleged that she was scared and therefore she had not raised any hue and cry. She was worried about the health of her husband and therefore she had not disclosed to him immediately on the cellphone. It is also alleged that in the morning at about 10 a.m., she had gone to meet her husband and had raised a quarrel with him as she had been victimised by his brother. It is alleged that on 12.12.2014 also the applicant had committed the same act. It is alleged that on 16.3.2015, the husband of the complainant had expired. That she was not allowed to see the dead body of her husband. It is alleged that she was standing alone. At the time of funeral, she was crying and at that time also the applicant had touched her inappropriately. On 27.3.2015 also the applicant is alleged to have told her that he would be coming to her house and had solicited sexual favours from her on the ground that she happens to be the widow of his brother.

4. On 30.5.2015, a supplementary statement of the complainant was recorded and she has corrected her earlier statement. That the second incident has not taken place on 23.11.2014, but on 4.12.2014.

5. Perused the papers of investigation. The certificate issued by Sahayog Hospital, Critical Care Unit dated 18.5.2015 clearly shows that the husband of the complainant was brought to the hospital by his brother and wife on 27.11.2014 at 10.30 p.m. and was admitted for treatment. The patient was referred by Dr. Roopesh Singh. He was diagnosed with MDR Tuberculosis and was discharged on 11.1.2014 at 4 p.m. he was re-admitted on 16.3.2015 in Sahayog Hospital and expired on 17.3.2015 at about 7 a.m. due to Acute Cardiorespiratory arrest and multi organ failure syndrome.

6. The learned counsel for the applicant rightly submits that the certificate is sufficient to indicate that there was no question of the applicant informing the complainant about the illness of her husband as she was present with the applicant at the time of admission of her husband in Sahayog Hospital. It is further submitted that the knife was kept by the complainant below her pillow and there was no reason for the applicant to know about the same. It is therefore, submitted that the recovery of knife under Section 27 of the Indian Evidence Act cannot be relied upon.

7. The learned APP submits that there are statements of witnesses

which would show that on the next date of incident, the applicant had gone to her house and had tendered his apology for the act which was committed on 11.12.2014. The statement of witness Vishwakarma show that on 11.12.2014 in the morning at about 7.20 a.m. the applicant had been to the house of the complainant and was tendering an apology for the act committed by him in various acts. At that time, the complainant was at the door-step. The witness has specifically stated that on 21.4.2015, he had been to his house along with police and at that time he learnt that the applicant herein had ravished her on 11.12.2014. The police has recorded statement of another witness who had witnessed that the applicant had called upon her on the cellphone. The learned counsel submits that since they were relatives, he had called upon the complainant to discuss about the health of his own brother. The statement of the Nurse of Sahayog Nursing Home shows that on 4.12.2014, the complainant was quarreling with her husband in the ICU Ward and she was warned against the same. The learned counsel for the applicant therefore submits that in fact, due to family disputes, the applicant has been falsely implicated.

8. The learned counsel for the applicant has also submitted that the complainant happens to be an active member of the Nationalist

Congress Party and she is likely to contest the elections for the Municipal Council on the ticket of the N.C.P. It is submitted that the first information report is lodged after the demise of the husband of the complainant. It is also submitted that the husband of the complainant had died on 17.3.2015 and the report is lodged on 21.4.2015 about the incident dated 11.12.2014. It is also submitted that the contention of the complainant that the applicant had admitted to touch her inappropriately at the time of funeral would not inspire confidence of the Court as it was not a situation when the applicant would indulge into such an act, especially when his own brother had died.

9. Be that as it may, the applicant has been in custody since 21.4.2015. Upon considering the papers of investigation as discussed above and the submissions advanced across the bar, this Court is of the opinion that the applicant deserves to be enlarged on bail.

10. The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of 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 his furnishing P.R. Bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount.
- (iii) The applicant shall report to the Thane Nagar Police Station on first and third Sunday of each month till framing of charge.
- (iv) The applicant shall not reside in Mumbai till conclusion of the trial, except for attending the dates at the time of trial i.e. at the stage of framing of charge and thereafter.
- (v) The applicant shall not contact the complainant in any way.

Application stands disposed of.

11. The Intervention Application is heard, allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)