

Anand

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

BAIL APPLICATION NO.1635 OF 2017

Shaukat Iqbal Husain alias .Applicant
Mohammed Shaukat

Vs.

The State of Maharashtra .Respondent

Mr.S.B.Shelar, Advocate, for the Applicant
Mr.R.M.Pethe, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 01.09.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.228 of 2014 registered with the Dharavi Police Station, Mumbai, for the alleged offence punishable under Section 376 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submits that the Applicant was having a love affair with the prosecutrix for about six

years, prior to the incident and that the relations between them were consensual. He submitted that when the Applicant refused to marry her, the aforesaid complaint was lodged by the prosecutrix. He submits that the Applicant was never absconding and that even prior to the date of the incident and even subsequent thereto, the Applicant was working as a driver in Saudi Arabia. He submits that the Applicant's passport is with the investigating officer and that the Applicant will not leave the country till the conclusion of the trial. Learned counsel for the Applicant has tendered an Affidavit of the Applicant's father-in-law – Mohd. Mustakeem Yaar Shah. The same is taken on record and marked as “X” for identification. The Applicant's father-in-law has stated that the Applicant will not leave the jurisdiction of Maharashtra, without the prior permission of the trial Court and that he will reside with him at Nizampura, Agra Road, Bhiwandi. The address where the Applicant will reside, if enlarged on bail has been set out in para 1 of the said Affidavit.

4. Learned APP opposes the Application.

5. Perused the papers. The Applicant is the brother-in-law of the prosecutrix, aged 28 years. She has alleged that she had separated from her husband for about seven years, prior to the date of the incident.

She has stated that the Applicant was working at Saudi Arabia for about four years and that he had come to Bombay on 26.05.2014. She has alleged that the Applicant had come to her house on 26.05.2014 at about 3.00 p.m. and had proposed marriage to her. She has stated that she ignored the said offer. She has further alleged that on 27.05.2014 at about 8.00 a.m. the Applicant again came home and proposed marriage. She has stated that when she refused the offer, she was first assaulted, pursuant to which, she became unconscious, after which the Applicant had physical relations with her. In the history given to the Doctor, the prosecutrix has stated that she was assaulted by the Applicant with a stick on her thigh and legs and with multiple kicks on her abdomen, resulting in loss of consciousness. She has stated that when she regained consciousness, she found herself uncovered below the waist. The Medical Report shows that the prosecutrix had sustained one abrasion over left thigh. It is also recorded that the prosecutrix was suffering from psychiatric disorder and was on antipsychiatric drugs. It also appears that when the Applicant was arrested, he gave history of a love affair between him and the prosecutrix for about six years. He has also stated that he had one episode of sexual intercourse with the victim with her consent. He has further stated that the prosecutrix was blackmailing and demanding money and when he refused, the aforesaid complaint

was lodged. Investigation is complete and charge-sheet is filed. The Applicant's father-in-law has filed an Affidavit stating that the Applicant if enlarged on bail, would reside at the address mentioned in para 1 of the Affidavit. The passport of the Applicant is already in the custody of the police. Learned counsel for the Applicant states that he will not seek return of the passport till the conclusion of the trial. Statement accepted.

6. In the peculiar facts and circumstances of the case, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs.30,000/-** with one or two local solvent sureties in the like amount;

(ii) The Applicant shall report to the investigating officer of the concerned police station on the **1st Saturday of every month** between **10.00 a.m. to 11.00 a.m.** till the conclusion of the trial;

(iii) The Applicant shall not leave Maharashtra without the prior permission of the trial Court till the conclusion of the trial;

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant/prosecutrix, witnesses

or any person concerned with the case;

(v) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The Applicant to cooperate in the conduct of the trial;

(vii) The Applicant shall file an undertaking with regard to Clauses (ii) to (vi) within one week of his release in the trial Court;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)