

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1679 OF 2017**

Nastain Jafarali Shaikh @ Babu	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms. Anjali Awasthi for the Applicant

Mr. V. V. Gangurde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 7th AUGUST, 2017

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 451 of 2016 registered with the Amboli Police Station, for the alleged offences punishable under Sections 452, 376(d), 341, 323, 504, 506(II) and 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offence in the entire charge-sheet. She submits that the complainant/prosecutrix had named 4

persons in the FIR and has stated that the said 4 named persons along with 5 to 6 unknown persons raped her on 31st October, 2016. She submits that in the identification parade, which was held on 24th November, 2016, the applicant has not been identified either, by the prosecutrix or by her husband. She submits that the applicant has no antecedent.

4. Learned A.P.P is unable to point out any material to show the complicity of the applicant. He does not dispute the fact, that the applicant has not been identified in the identification parade either, by the prosecutrix or her husband.

5. Perused the papers, in particular, the statements of the prosecutrix and her husband and the report of the identification parade. According to the complainant/prosecutrix, she had gone with her husband to the maternal aunt's house at Shyamnagar, Veera Desai Road, Andheri (West), in search of a house on rent. She has alleged that they decided to stay at the house of her aunt. She has further stated that after her aunt, who was a nurse, went for her night duty, at around 10:15 p.m., someone knocked the door. She has stated that when her husband opened the door,

one unknown person came inside and that 7 others followed him. She has stated that one of the said persons held her husband and took him outside the room and assaulted him. She has stated that the said persons who had entered the room, had forcible intercourse with her. Pursuant to the said incident, she along with her husband went to the Police Station and lodged a complaint. The police brought 4 persons to the Police Station and the complainant/prosecutrix identified the said four persons. On 24th November, 2016, identification parade was held. In the said identification parade, the complainant/prosecutrix and her husband have not identified the applicant. There is no other material to connect the applicant with the alleged offence. The applicant has no antecedent. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 12:00 noon till the conclusion of the trial;

(iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number 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;

(v) The applicant to cooperate with the conduct of the trial.

7. The application 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.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.