

Anand

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

BAIL APPLICATION NO.1957 OF 2017

Rajesh Premchand Sharma

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr.M.B.Shirsat i/b. Mr.R.A.Kale, Advocate, for the Applicant
Ms A. Malhotra, 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.314 of 2017 registered with the Bandra Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(N), 493 & 495 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Complainant/Prosecutrix was well aware of the fact, that the Applicant was a married man. He further submitted that the Applicant and the Prosecutrix were known to each other since 2008 and that they were

living together from 2014. He submitted that the allegation made by the Prosecutrix, that she learnt only in 2017, that the Applicant was a married man with a child, is false and baseless.

4. Learned APP opposes the Application.

5. Perused the papers. According to the Prosecutrix, aged 26 years, she met the Applicant sometime in 2008 and that their friendship developed into a love affair. She has stated that the Applicant proposed marriage to her and on the pretext that he was going to get married, had physical relations with her. She has further stated that in 2009 with the Applicant's help, they opened a shop in the Applicant's neighbourhood. She has further stated that in January, 2009, the Applicant decided to celebrate her birthday at Lonavala, and accordingly, booked a room in a hotel. She has alleged that the Applicant asked her to have physical relations with him and when she refused to have physical relations, as they were not married, the Applicant went out of the hotel, and returned with a Mangalsutra and sindoor. According to the prosecutrix, the Applicant put the Mangalsutra and applied the sindoor on her forehead, after which they had physical relations. She has alleged that thereafter, on some occasions, the Applicant had physical relations with her

consent and sometimes without the consent. She has further stated that till 2014, they were running the shop smoothly, however, as the rent increased, they were unable to manage the shop and hence, decided to close the same. She has further alleged that when she asked the Applicant about marriage, the Applicant ignored the topic. According to the prosecutrix, on 15.08.2014, the Applicant visited her mother's house and told her that they were getting married, pursuant to which her mother disclosed the said fact, to all their relations. She has further stated that thereafter, she started living with the Applicant, in a flat, as husband and wife. She has stated that the Applicant would stay with her for three days in a week and on the other days, would stay with his father, as he was unwell (as disclosed by the Applicant). According to the prosecutrix, after about one year of marriage, she found that the Applicant's behaviour had changed; that he would not allow her to touch his mobile; that once she checked the Applicant's mobile and found a photo of one lady and a child in the Applicant's mobile; that when she asked the Applicant about the lady and the child in photograph, the Applicant disclosed that lady in the photograph was his sister and the child was his nephew; that again, after a few days, when she checked the Applicant's phone, she saw a facebook post saying "Papa you are looking smart", to which the Applicant had replied 'thank you'.

According to the Prosecutrix, when she questioned the Applicant, he disclosed that he was already married and had a wife and a son. She has stated that pursuant thereto, she lodged the aforesaid complaint. The prosecutrix has alleged that the Applicant had suppressed from her, that he was married earlier and that the Applicant had physical relations with her, on the pretext of marriage. The Applicant is in custody since 16.07.2017. Investigation is almost over.

6. Considering the aforesaid and in the peculiar facts of this case, continued detention of the Applicant is not warranted. Accordingly, 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.25,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on every Saturday between 10.00 a.m. To 12.00 noon till the filing of the charge-sheet or for a period of three weeks whichever is earlier.

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.)