

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1961 OF 2017

SANDEEP RAMASHANKAR UPADHYAY)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Sushil Upadhyay, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 30th OCTOBER 2017

P.C. :

1 The applicant / accused in Crime No.104 of 2017 registered at the instance of the prosecutrix for offences punishable under Sections 376(2)(n), 328, 342, 323, 504, 506 of the Indian Penal Code and under Sections 37 and 135 of the Maharashtra Police Act as well as under Sections 4 and 25 of the Arms Act, by this application, is seeking his release on bail during pendency of the trial.

2 Heard the learned advocate appearing for the applicant / accused. By drawing my attention to the First Information Report (FIR) lodged by the prosecutrix, he argued that the FIR is lodged after three months of the alleged incident. The FIR itself shows that the prosecutrix and the applicant / accused were in love relation. Medical opinion is not supporting the prosecution and therefore, the applicant / accused is entitled for bail.

3 The learned APP opposed the application by contending that version of the prosecutrix is gaining corroboration from the version of her mother and it is seen that the applicant / accused had committed rape on the prosecutrix.

4 I have carefully considered the rival submissions and perused the entire charge-sheet. The FIR itself reveals that the prosecutrix is an adult lady, who has stated her age as 21 years. She as well as her family were acquainted with the applicant /

accused and his family members. Both families were jointly doing business of imitation jewellery. The FIR itself reveals that the prosecutrix was in love with the applicant / accused and after their families came to know about this relation, they continued their relation as friends. On this backdrop, it is averred by the prosecutrix that on 12th January 2017, there was quarrel between her and the applicant / accused because the applicant / accused had questioned her about outgoing calls in her cell phone. The prosecutrix further stated that then she along with the applicant / accused stayed in a room in a chawl where the applicant / accused had administered a tablet containing stupefying substance to her. She became unconscious and when she woke up in the morning, she apprehended that she had been raped. Thus, according to the prosecutrix, the incident took place on 12th January 2017. The prosecutrix did not lodge report about this incident, nor she had informed this incident to her mother or other relatives. The FIR itself shows that the applicant / accused used to insist family members of the prosecutrix that the prosecutrix be married to him. The FIR further reveals that

subsequently, on 20th January 2017 also, in the very same room, the applicant / accused had committed rape on the prosecutrix. The prosecutrix contended that on this occasion also, the applicant / accused quarreled with her and then raped her. The prosecutrix did not lodge report immediately after 20th January 2017. Ultimately, she lodged report against the applicant / accused on 24th March 2017.

5 Prima facie, it is seen that the charge-sheet itself reflects that there was love relation between two adult persons and the applicant / accused was insisting to marry the prosecutrix. The investigation of the crime in question is over and the charge-sheet has also been filed. The applicant / accused is not stated to have any criminal antecedents nor it is apprehended that if released on bail, he will tamper the prosecution evidence. In this view of the matter, the following order :

ORDER

- i) The application is allowed.

- ii) The applicant / accused in Crime No.104 of 2017 registered at Police station Kurar, Mumbai, for offences punishable under Sections 376(2)(n), 328, 342, 323, 504, 506 of the Indian Penal Code and under Sections 37 and 135 of the Maharashtra Police Act as well as under Sections 4 and 25 of the Arms Act, is directed to be released on bail, on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) The applicant / accused should not contact either the prosecutrix or her family members in any manner.
- iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- v) The application is disposed of.

(A. M. BADAR, J.)