

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2064 OF 2017

SAMEER NANDKUMAR SAWANT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Jayant Bardeskar, Advocate for the Applicant.

Mr.S.S.Pednekar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 30th OCTOBER 2017

P.C. :

1 The applicant / accused in Crime No.I-48 of 2017 registered with Police Station Wagle Estate, Thane, for the offences punishable under Sections 376, 365, 324, 328, 504 and 506 of the Indian Penal Code and under Sections 4 and 25 of the Indian Arms Act, as well as under Sections 37(1) and 135 of the Maharashtra Police Act, by this application, is seeking his release on bail after filing of the charge-sheet.

2 Heard the learned advocate appearing for the applicant/accused as well as the learned APP for the State. The learned APP opposed the application by placing reliance on statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure and contended that the applicant / accused had enticed a married woman by taking advantage of the situation in her married life and thereafter, committed rape on her. The learned APP further contended that a stupefying substance was administered to the prosecutrix and she was made to accompany the applicant/ accused.

3 I have carefully considered the rival submissions and also perused the entire charge-sheet.

4 The crime in question is registered on the basis of report lodged by the husband of the prosecutrix on 20th February 2017. The husband of the prosecutrix alleged that the applicant / accused and the prosecutrix were acquainted with each other. He further averred that on 14th January 2017 he followed the

prosecutrix and found that she was going to the rented room of the applicant / accused. Then, there was a quarrel which resulted in deserting the First Informant by the prosecutrix. The First Informant further averred that the prosecutrix then returned on 2nd February 2017. On 9th February 2017, the prosecutrix along with her brother Rohit Dangre had been to the room of the applicant / accused for fetching clothes of the prosecutrix. At that time, the applicant / accused abducted the prosecutrix.

5 During investigation of the crime in question, the applicant / accused came to be arrested on 22nd February 2017 from Lonavla while he was in company of the prosecutrix.

6 The charge-sheet reveals that prior to the incident in question, even on earlier occasion, the prosecutrix had eloped with the present applicant /accused and had returned after fifteen days. The First Information Report (FIR) as well as papers of investigation show that while in company of the present applicant / accused, the prosecutrix had paid rent of the room to

the landlord named Ramchandra Vitthal Erup. She along with the present applicant / accused had gone to the office of Advocate Ramesh Tripathi, Notary Public, and instructed him to draft an affidavit. The prosecutrix had then sworn the affidavit before the Notary Public. The charge-sheet contained that affidavit of the prosecutrix wherein she has alleged that the First Informant / husband had subjected her to cruelty and as he had beaten her, she had deserted him and took shelter of her relatives. The prosecutrix had also sent a complaint to the Commissioner of Police, Thane, alleging that her husband had subjected her to cruelty and therefore, she had deserted him. She further averred in that complaint dated 15th February 2017, which was received by the Commissioner of Police, Thane, even prior to lodging the FIR by the husband that her husband is levelling false and bogus allegations about her kidnapping and she has not been kidnapped by any one.

7 If the statement of the prosecutrix is perused in the light of all these developments which happened even prior to

lodging of the FIR, then it does not prima facie stand to any reason that she was administered some stupefying substance and therefore, she was unable to understand what was happening with her. Even the Chemical Analyser's Report shows that greyish powder seized during the course of investigation does not contain any narcotic drug.

8 In the wake of this evidence against the present applicant / accused and as the investigation in the crime in question is over, further pre-trial detention of the applicant / accused is not warranted. Therefore the order :

ORDER

- i) The application is allowed.
- ii) The applicant / accused in Crime No.I-48 of 2017 registered with Police Station Wagle Estate, Thane, for the offences punishable under Sections 376, 365, 324, 328, 504 and 506 of the Indian Penal Code and under Sections 4 and 25 of the Indian Arms Act, as well as under Sections 37(1) and 135 of the Maharashtra Police 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) As a condition of this order, the applicant / accused should not contact the prosecutrix or her relatives including the First Informant 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.)