

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

CRIMINAL BAIL APPLICATION NO.2100 OF 2017

Mr. Francis Inthru Mendonca

... Applicant

Vs

The State of Maharashtra

... Respondent

...

Mr. Sanjeev Kadam a/w Vinod Naik for the Applicant.

Mr. V. V. Gangurde – APP for the State.

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER, 2017

P.C. :

1. The applicant/accused is seeking bail in crime No.247/2017 registered with Khoparkhairane Police Station, Navi Mumbai for the offences punishable under Section 376, 354, 506 read with Section 34 of Indian Penal Code.

2. Heard the learned Advocate appearing for the applicant/accused as well as the learned APP. The learned APP opposed the application by contending that the FIR indicated that the incident was that of a rape and a prosecutrix delivered a baby out of this incident. D.N.A of the applicant as well as the newly born

baby is sent for necessary report and therefore, the applicant is not entitled for bail.

3. Perused the material made available. The FIR came to be registered by an adult lady, aged about 32 years on 03.08.2017. She claimed to be a maidservant at house of the applicant. She reported that the incident of forcible sexual intercourse with her took place in August 2016 and thereafter, in November 2016. She further claimed that one person working in the house of the applicant namely Indal has also committed forcible sexual intercourse with her. The report of the incident which took place in August 2016 came to be lodged by the prosecutrix after one year and precisely on 03.08.2017. Prior to that it is seen that the applicant himself had reported the police regarding missing of the prosecutrix on 15.05.2017. It is also seen that one more report informing the Senior P. I. that the prosecutrix is missing from 21.03.2017 came to be lodged by the applicant and his wife Irene.

4. As the prosecutrix is fully grown up matured women, the question will be whether the sexual intercourse allegedly took place

falls under the term “Rape” defined in Section 375 of the IPC. The incident allegedly took place in the residential house of the applicant which he used to share with his family members. The prosecutrix did not raised any grievance for one year. It appears that she was not visiting the house of the applicant right from 21.03.2017.

5. Considering this evidence against the applicant–co-accused his further pretrial detention is not required and he is entitled to be released on bail. As such the order:-

- i) The application is allowed
- ii) The applicant – accused in above crime be released on bail on his executing P. R. Bond in the sum of Rs.25,000/- and on furnishing one or two solvent sureties in the like amount.
- iii) As the condition of this Court, the applicant should not contact the prosecutrix or her relatives in any manner.
- iv) The applicant shall not directly or indirectly, make any inducement, threat or promise either to the prosecutrix

or 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.

- vi) On request of the learned Advocate appearing for the applicant, initially for a period of four weeks, applicant be released on furnishing cash security of Rs.25,000/- in order to enable him to arrange surety during that time.

(A. M. BADAR, J.)