

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2312 OF 2016

PRASHANT SHIVAJI JADHAV)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.A.P.Mundargi, Senior Advocate, i/b. Mr.U.R.Mankapure,
Advocate for the Applicant.

Ms.A.A.Takalkar,, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th JANUARY 2017.

P.C. :

1 By this application under Section 439 of the Code of Criminal Procedure (Cr.P.C.), the applicant / accused is seeking bail in Crime No.51 of 2016 registered with Vishrambag Police Station, Sangli, for the offences punishable under Section 376(1) of IPC and under Section 3(1)(r)(s) and 3(1)(w)(i) of Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.

2 The learned senior counsel appearing for applicant / accused argued that FIR of the alleged incident dated 28th February 2016 has been lodged on 27th March 2016. The prosecution initiated against the present applicant / accused is at the behest of one Sharvari Ashok Pawar. The FIR itself shows that the prosecutrix was residing with said Sharvari Pawar since her childhood and as such, was controlled by Sharvari Pawar. By drawing my attention to the affidavit of the present applicant / accused as well as that of Sharvari Pawar dated 27th February 2015 and to the Leave and Licence Agreement dated 15th April 2015, the learned senior counsel argued that it is seen that the applicant / accused as well as said Sharvari Pawar were residing at Balaji Padma Apartment of Sangli from February 2015. Ultimately, there was settlement of matrimonial dispute between the present applicant / accused and his wife which has resulted in filing of an affidavit before this court in Criminal Application No.1096 of 2016 by the wife of the present applicant / accused. The learned senior counsel further pointed out that, then on 1st April 2016, that criminal application came to be allowed and the

applicant / accused was granted anticipatory bail in Crime No.181 of 2015 for the offences punishable under Sections 498A, 504, 506 and 406 of the IPC registered on the basis of report lodged by his wife Shamika Prashant Jadhav. The learned senior counsel with the aid of this documentary evidence argued that the applicant / accused resumed cohabitation with his wife Shamika after February 2016 and this has triggered the lodging of the false FIR against the applicant / accused by Sharvari Pawar. The learned senior counsel further drew my attention to statement of Ashok Koli as well as complaint of Nitin Londhe against the present applicant / accused as well as Sharvari Pawar to show antecedents of Sharvari Pawar and it is argued that the prosecutrix was literally under control of this Sharvari Pawar. It is further argued that as the investigation of the crime in question is complete and with passage of time, even there is no medical evidence to corroborate the version of the prosecutrix and therefore keeping in mind the mode and manner in which the applicant / accused is sought to be prosecuted, he deserves liberty during pendency of the trial.

3 The learned APP has opposed the application by contending that allegations against the present applicant / accused are serious in nature and considering the allegation that the applicant / accused has committed rape on a person belonging to the Scheduled Castes who was in his custody at the relevant time, he does not deserve bail.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet as well as the documents annexed to the application. The crime in question is registered on the basis of report lodged by the prosecutrix on 27th March 2016. That report was lodged in presence of Sharvari Pawar and said Sharvari Pawar has also signed the report lodged by the prosecutrix.

5 It is averred by the prosecutrix in her report that since her childhood, she is residing with Sharvari Pawar. The prosecutrix stated her age as 18 years 5 months. She further averred that the present applicant / accused, Sharvari Pawar and

she herself were jointly residing in an apartment at Balaji Padma, Sangli. As per version of the prosecutrix, on 28th February 2016, the applicant / accused committed rape on her by taking advantage of the absence of Sharvari Pawar from the apartment. The prosecutrix has also made allegation about offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the present applicant / accused. The prosecutrix has stated that as she was to appear for her 10th Standard Examination, though the incident took place on 28th February 2016, she is reporting the same on 27th March 2016.

6 It is, thus, seen that the prosecutrix is an adult lady residing with Sharvari Pawar since childhood. Record of investigation goes to show that the applicant / accused and said Sharvari Pawar were residing jointly from February 2015. The FIR does not disclose that during the period of joint stay with the applicant / accused for a period of about one year, the applicant / accused had ever misbehaved with the prosecutrix at any point of time.

7 On this factual backdrop, some incidents which took place prior to lodging the FIR are relevant. It is seen that Shamika Prashant Jadhav – wife of the applicant / accused had lodged report against him which has resulted in registration of Crime No.181 of 2015 against the applicant / accused. The applicant / accused approached this court by filing an application for anticipatory bail which was registered as Criminal Application No.1096 of 2015. During pendency of that application, Shamika Jadhav – wife of the applicant / accused had filed an affidavit before this court by stating that the applicant / accused resumed cohabitation with her from 20th February 2016 by severing his illicit liaison with Sharvari Pawar. Then, the applicant / accused was granted anticipatory bail by this court in the said crime. This development indicates that from 20th February 2016 the applicant / accused was not cohabiting with Sharvari Pawar with whom the prosecutrix was residing since her childhood. On this backdrop, one will have to consider whether really on 20th February 2016 the applicant / accused was residing with Sharvari Pawar in Balaji Padma Apartment.

8 It is seen prima facie that said Sharvari Pawar had married one Jyotiram in late 90s and thereafter she married one Nitin Londhe. The applicant / accused has placed on record the documents to this effect apart from the complaint of Nitin Londhe to the effect that by deserting him, said Sharvari Pawar has started residing with the applicant / accused and he is suffering threats to his life at the hands of the applicant / accused as well as said Sharvari Pawar. Then there is statement of Akshay Koli who claims to be an employee of the applicant / accused as well as Sharvari Pawar. He stated that Sharvari Pawar used to force the applicant / accused to sign bearer cheques and he used to withdraw the amount of those cheques and hand over the same to said Sharvari Pawar. Apart from this, statement of Akshay Koli also shows that Sharvari Pawar used to ask him to spy the applicant / accused in order to ascertain where the applicant / accused goes, to whom he meets etc. When the prosecutrix prima facie appears to be totally in control of said Sharvari Pawar because of her stay with Sharvari Pawar since her childhood, these

aspects are relevant in the instance case because the offence is such that when a statement is made that the applicant / accused has committed an offence punishable under Section 376 of the IPC, then it is very difficult to dislodge the same. Surrounding circumstances are as such relevant in such type of cases particularly when such allegations are made by an adult lady having atleast some motive to implicate the accused in the crime in question.

9 Now the investigation of the crime in question is already over. Even the medical report does not corroborate version of the prosecutrix in any manner. The FIR is belated. The surrounding circumstances are disclosing the possibility of false implication of the applicant / accused in the crime in question because of reconciliation of his matrimonial dispute and his resumption of cohabitation with his wife. Considering totality of circumstances, after completion of investigation, I am of the considered opinion that the applicant / accused deserves liberty and therefore the order :

- i) The application is allowed.
- ii) The applicant / accused in Crime No.51 of 2016 for the offence punishable under Section 376(I) of IPC and under Section 3(1)(r)(s) and 3(1)(w) (i) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered with Vishrambag Police Station, District Sangli, be released on bail on his executing PR.Bond in the sum of Rs.30,000/- with one or two sureties in like amount.
- iii) As a condition of this order, the applicant / accused should not contact prosecution witnesses including Sharvari Pawar and the prosecutrix in any manner. He shall not tamper prosecution evidence and should not extend threat, promise or inducement to prosecution witness so as to dissuade them from disclosing the facts to the Investigating Officer or to the Court.

10 Needless to say, that observations made in this order are prima facie observations which will not have any bearing on the trial.

(A. M. BADAR, J.)