

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2387 OF 2016

Jaydeep Shivratana Sharma	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

**WITH
CRIMINAL APPLICATION NO. 27 OF 2017
IN
BAIL APPLICATION NO. 2387 OF 2016**

Mamta Jaydeep Sharma	...	Intervener
in the matter between		
Jaydeep Shivratana Sharma	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.P. Mundargi, Senior Advocate a/w. Anup Lahoti i/b. Mr. Jaipal V. Tare Patil, Advocate for the applicant.
Mrs. Rutuja Ambekar, APP for the State.
Ms. Archana Rupwate, Advocate for the Intervener in APPP/27/2017.

**CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 22nd February, 2017.**

P.C.:

Today the learned counsel for the applicant/accused handed over demand draft of Rs.3,50,000/- to the learned counsel for the original complainant.

2. This Application is moved by the applicant/accused for bail, as he is facing prosecution for the offences punishable under sections

376, 377, 498A, 323, 504 r/w. 34 of the Indian Penal Code and under sections 66(C) and (E), 67 of Information Technology Act.

2. It is the case of the prosecution that the wife of the applicant/accused and applicant/accused got married on 26th November, 2014. Thereafter she started residing along with her husband at Chikali, Pune. In the beginning, she was treated well by the applicant/accused. However, there was demand of money by the applicant/accused and his parents. She was sent to her maiden home to bring money. The applicant/accused used to force her to drink liquor and then he had unnatural intercourse with her number of times. It is her case that her father-in-law and her brother-in-law both raped her in April and July, 2015, however, she did not disclose this incident to anybody due to embarrassment. It is her case that her parents gave nearly 3.50 lakhs from time to time to her mother-in-law, father-in-law and applicant/accused. The applicant also forced her to sexually entertain a person who was to conduct his interview. Earlier she gave complaint to Thane Police Station on 11th July, 2016 and thereafter on 16th August, 2016 she approached the Women Cell and registered offence. Then she approached the Nigadi Police Station, Pune and gave complaint, thus the offence was registered at

C.R. No. 562 of 2016 with Nigadi Police Station, Pune.

3. The learned senior counsel for the applicant/accused has submitted that the applicant/accused has not committed any offence. Both are husband and wife and there is no evidence of committing offence under section 377 of Indian Penal Code. He further argued that the complainant has never disclosed about rape by her father-in-law and brother-in-law to anybody. He submitted that the applicant/accused is husband and the charges faced by him is of cruelty and under section 377. He relied on the statement of one Subhash Kashyap recorded on 27th August, 2016 who worked as middleman in the marriage. He pointed out that in the month of May 2016, the father of the complainant had contacted him on phone and the said conversation is recorded by him. The discussion was going on for one hour 17 minutes, however, nothing is said about the incident of rape or unnatural sexual intercourse. He also produced photographs of the complainant and the accused when they were with their friends.

4. Learned APP opposed the Application. She relied on the statement of Satyanarayan Shriniwas and Subhash Amrutlal Sharma.

She pointed out from the statement of Satyanarayan that a joint meeting was held where in-laws of the complainant has tendered unconditional apology and promised that they would not hereafter torture her, so this is the admission given by in-laws.

5. Perused the FIR and the statements relied by both the parties. The applicant/accused is a husband who is facing charges under section 498A and 376 of the Indian Penal Code. There is no charge against him under section 376 of Indian Penal Code. There is no other evidence *prima facie* to show as such that the offence under section 377 has been committed by him. It is a word against a word. Moreover, when her father had discussion with the middleman for about one hour 17 minutes, nothing was said about such abnormal or sexual behaviour of the husband. The police have not collected the said recorded conversation which was said to be available with the middleman. The complainant did not disclose these incidents of cruelty to her parents or her friends. Today the applicant/accused has paid Rs.3,50,000/- by demand draft to the complainant/wife. Hence, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) Application is allowed.

- (ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.40,000/- with one or two sureties in the like amount;
- (iii) The applicant shall not tamper the evidence;
- (iv) The applicant shall not pressurize the complainant or her family members;
- (v) The applicant shall not jump the bail;
- (vi) The applicant shall attend all the court dates;
- (vii) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address;
- (viii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application for bail stands disposed of on above terms.

7. In view of disposal of Application for bail, Criminal Application No. 27 of 2017 is also accordingly disposed of.

(MRIDULA BHATKAR, J.)