

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 155 OF 2018***

Mr. Shakti Nilkanth Kubal

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Chaitanya Pendse i/b Ms. Anuradha R. Joshi, for the applicant.

Mr. S. R. Agarkar, APP, for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 25th January, 2018.

P.C. :

1. Heard. This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in C.R.No.273 of 2017 registered at Juna Rajwada Police Station, Kolhapur, for the offences punishable under Sections 354(A), 376(2)(N) of the Indian Penal Code.

2. It is the case of the prosecution that the complainant herein Mrs. Rohini Sagar Patil lodged a report at the police station on 17.6.2017 alleging therein that she is residing with her daughter and son at Kolhapur. That she wanted to raise loan for purchasing a two-wheeler and hence she approached Shamrao Vitthal Co-operative Bank, Branch Shahupuri. There she had met the present applicant on several occasions. he had extended a

helping hand and, therefore, she had reposed faith in him. He had also extended a hand-loan. That she was trying her best to repay the loan, but could not make it and, therefore, she left a message for him. On 3.9.2017 at about 12.30 noon, the applicant had allegedly visited the house of the complainant and had misbehaved with her. he had made an attempt to molest her and had illicit sexual favours. On the basis of this report, Crime No.273 of 2017 was registered at Shahupuri Police Station.

3. The statement of the complainant was recorded under Section 164 of Cr.P.C. on 13.10.2017. In the said statement, the complainant had alleged that on 9.9.2017, at about 12.30 noon, the applicant had visited her house. She had asked him to wait in the hall and had gone inside for changing her clothes and at that time, the applicant herein had ravished her against her wish. He had done the said act in the presence of her children. Her children raised hue and cry. He had fled from her house. On the basis of the said statement, Section 376 of IPC has been added.

4. The learned counsel for the applicant submits that the first information report is lodged on 20.9.2017 and the complainant had not stated anything about the incident dated 9.9.2017. According to the learned counsel for the applicant, in fact, there is a delay in lodging the FIR as in

the first information report, the complainant has stated about the incident dated 3.9.2017 and she would not have forgotten to mention the incident dated 9.9.2017. The learned counsel submits that the delay in lodging the FIR would clearly indicate that the applicant has been falsely implicated. In fact, the complainant had filed an affidavit during the hearing of the Bail Application before the Sessions Court and it is stated that at the time of lodging the first information report, she was scared and, therefore, she could not state about the incident dated 3.9.2017. It is also submitted that the applicant happens to be an influential person and is making an attempt to coerce the complainant to withdraw the complaint.

5. It is pertinent to note that the brother of the applicant herein had filed Writ Petition No.4922 of 2017 on 27.11.2017 seeking a Writ of Habeas Corpus in respect of the present applicant. According to the said petitioner, on 21.9.2017 at about 9.30 a.m., he had received a call from the police station. He was asked to remain present in the enquiry and investigation on 22.9.2017 and that he had not returned home. The Hon'ble Division Bench has dismissed the said Writ Petition by an order dated 15.12.2017. The observations in the said order would clearly indicate that the brother of the applicant was fully aware that a report was lodged against

the applicant on 20.9.2017. He was called by the police station and only to avoid arrest, the Habeas Corpus Petition was filed in this Court. In any case, it is clear that the explanation offered by the complainant needs to be taken into consideration that at the time of lodging the FIR, she was scared and therefore had not narrated the incident dated 9.9.2017.

6. The learned APP has vehemently submitted that the applicant herein has criminal antecedents. The applicant has been dismissed from service by an order dated 22.11.2017 as he was placed under suspension on 1.3.2017. The learned APP also submits that the applicant happens to be the union leader of the staff of Shamrao Vitthal Co-operative Bank. That the applicant does not deserve to be granted discretionary relief under Section 438 of Cr.P.C.

7. Upon taking into consideration the statement of the complainant recorded under Section 164 of Cr.P.C., the records of the case and the submissions advanced across the bar, and the observations made by the Hon'ble Division Bench while dismissing the Writ Petition, this Court is of the opinion that the applicant does not deserve to be granted pre-arrest bail. Hence, the application stands rejected.

(SMT. SADHANA S.JADHAV, J.)