

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 158 OF 2018

Mhamad Hussain Shabbir Sayyad.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Ranjeet H. Patil, advocate for applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 30, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 299/2017 registered at Sangli City Police Station for offence punishable under section 376(2)(f), 376(2)(2n), 354, 504,

506, read with 307, 333, 332, 147, 148, 149, 160 of the Indian Penal Code and Section 3, 1 and 25 of the Arms Act and section 37(1)(3) and 135 of the Maharashtra Police Act.

3 It is the case of the prosecution that on 6.12.2017, Waheeda Shaikh lodged a report at the police station alleging therein that she was being sexually abused by her brother-in-law i.e. Firoz. It is alleged that on 28.8.2017 to 28.9.2017, her brother-in-law (her husband's brother) had sexually abused her regularly. According to the complainant, the applicant who happens to be the married sister of accused Firoz as well as her husband, had not paid any heed to any complaint when she informed her that she is passing through a phase of sexual abuse at the hands of her brother-in-law.

4 Upon considering the facts of the case, this Court had granted pre-arrest bail to the wife of the present applicant vide order dated 18/1/2018. In fact, the applicant herein happens to be the husband of the sister-in-law of the victim informant. There is no allegation

against him for the offence punishable under section 376 of the Indian Penal Code.

5 FIR is filed after 4 months of the alleged incident and there is no plausible explanation for inordinate delay in lodging the FIR. Delay in filing FIR under section 376 of the Indian Penal Code may not be fatal to the prosecution in all cases.

6 Considering the role attributed to the present applicant, he deserves to be protected under Section 438 of the Code of Criminal Procedure, 1973.

7 However, it is made clear that observations made hereinabove are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR or discharge application or at the time of trial.

8 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime Nos. 299/2017 registered at Sangli City Police Station, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall attend concerned police station as and when called and cooperate with the investigating agency to the best of his capacity.
- (iv) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)