

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

CRIMINAL BAIL APPLICATION NO. 356 OF 2018

Sumit Dattatray Nikam.

... Applicant.

V/s.

The State of Maharashtra & anr.

... Respondents.

Mr. Harshad Sathe a/w. Mr. Amogh P. Khadye I/b. Ms. Sonam Singh,
advocate for applicant.

Ms. Kalyani Pramod Shivalkar, complainant present in court.

Mr. S.H. Yadav, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 24, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for the State. Perused the papers of investigation.

2 This is an application under section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 8/1/2018 in
Crime No. 3 of 2018 registered at Mahad MIDC Police Station for

offence punishable under section 376(2)(n), 417, 420, 323,504 of the Indian Penal Code.

3 It is the case of the prosecution that on 7/1/2018 one Ms. Kalyani Shivalkar lodged a report at the police station alleging therein that she is working in Samsung Mobile Gallery. She was transferred to Mahad. She had no room to stay. Shrikant Pawar had helped her to get accommodation. Shrikant Pawar was staying with Sumit Nikam i.e. the present applicant. He had also started residing with them in the same flat. According to her, after one week, the present applicant had expressed his love for her. She had disclosed to him that she was married in the year 2009. That she was not residing with her husband since the marriage was without her consent. He still insisted upon her to get married. In the year 2015, she had obtained divorce from her first husband. It is alleged that the present applicant had introduced her to his parents. His parents are not agreeable with him to marry with her. However, the applicant had assured her that he will get married to her. There was quarrel between the applicant and Shrikant Deokar and therefore, Shrikant

Deokar had withdrawn himself from the said flat and the flat was occupied by the applicant and the complainant. According to her, she was insisting upon him to get married to her as they had established physical relations. She had stated in the FIR that she had not consented to sexual intercourse. However, he had forced himself upon her on an assurance that they would get married. He was also using her debit card and credit card. They had also stayed at lodge in Pune. In the meanwhile, she was transferred to Pen and thereafter, according to her, he was evading to meet her. He has abused her. On 19/12/2017 she had asked him for his final decision in respect of the marriage. He had taken the complainant to her family and handed over her custody to her family members. According to the complainant, since he had refused to marry her, she was constrained to file report at the police station.

4 Today the complainant is present in the court. She has submitted that only because the applicant was not willing to get married to her at that stage, she had lodged the report. It appears

that she had filed an affidavit on 15/1/2018 when the application was pending before the Court. She had submitted that there is no scope for tampering with the evidence and that the investigation is almost completed and therefore, she has no objection to grant bail to applicant. Today this Court has enquired with the complainant and according to her, the applicant has given an undertaking assuring that he would get married to her soon after he is released on bail. She has handed over the copy of the undertaking to this Court and according to her, when the applicant was brought to the court for attending formal dates, they had executed this agreement before notary. The applicant has given his Adhar Card to the notary and it appears that the undertaking is notarised document. According to her, he has promised her that he would get married to her. Upon query made by this Court, she has submitted that she had no other way to force him to marry her except by filing a criminal case. In fact, this practice has been deprecated by Courts of Law. The complainant has used police machinery and court proceedings only to force the applicant to get married to her. She has orally submitted that it was consensual act.

However, she felt cheated because he was evading to get married with her.

5 Taking into consideration the above mentioned facts, the applicant deserves be granted.

6 The observations hereinabove are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

7 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall not tamper with the evidence.

8 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)