

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 930 OF 2018**

Shivaji Bapuso Khandekar. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Balwant V. Salunkhe, advocate for applicant.

Mr. Prashant Jadhav, APP for State.

Mr. D.S. Patil, Police Naik, Sangli City Police Station.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 14, 2018.

P. C. :

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant here is arrested on 22/9/2017 in Crime No. 204 of 2017 registered at Sangli City Police Station. The investigation is completed and charge-sheet is filed against the applicant on 28/11/2017 for offence punishable under section 376(2)(f)(n), 511, 354A(1)(2) of the Indian Penal Code and under the provisions of section 7, 8, 9(N), 10, 11, 12 of the Protection of Children from Sexual Offences Act. The applicant happens to be the biological father of Ms. X. She is

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about 21 years old. Her date of birth is 2/6/1997.

3 It is the case of the prosecution that Ms. X lodged a report at the police station on 19/9/2017 alleging therein that four years ago when she was sleeping alone in the bedroom her father i.e. the present applicant had touched her inappropriately. He had threatened that in the eventuality she does not respond positively or she attempts to inform her mother, he would not look after her mother and her brother. It was in this circumstance, according to her, that she had responded positively. She has further alleged that after completion of her education, she had started working in TATA Motors since 2017 and was residing at Bhosari, Pune. One Rukaiya was her room partner. On 21/7/2017 her father had visited her room. Rukaiya had been to Katraj on that day. After dinner, her father had again sexually abused her. She had called her room partner on her cell phone and informed her to return and thereafter, she had disclosed to her room partner the trauma through which she is going. She has further alleged that whenever she was alone her father had taken undue advantage and had sexually abused her. On 28/8/2017 he had brought her home at Sangola. In the mean while, at the instance of Rukaiya she had recorded the conversation between her and her father in order to enable her to approach the police station. She had then given the said audio clip to her mother. At that juncture, her father

i.e. present applicant had disclosed to her mother that she intends to get married to one Samir Mulla and therefore, she had concocted the story. From 5/9/2017 she was residing with her uncle for some time. She had also instructed her room partner Rukaiya that in the eventuality she does not receive call from her, she can approach the police station and file report. On 18/9/2017 woman police had been to the house of her uncle and thereafter, her statement was recorded on the basis of which offence was registered against the present applicant.

4 In the course of investigation, the statement of Rukaiya is recorded. She had stated that her room partner i.e. complainant had disclosed to her about the atrocities at the hands of her father. Rukaiya had not disclosed it to anybody. Rukaiya had advised her to record the conversation. Rukaiya was made to hear the conversation and thereafter report is lodged.

5 The learned Counsel for the applicant has drawn attention of this Court to the complaint filed by Irfana Samir Mulla filed in the court of Judicial Magistrate First Class, Karad in 2017. The complainant i.e. daughter of the applicant is shown as respondent No. 4 in the said complaint. Irfana has alleged on affidavit that her husband Samir Mulla is having illicit intimacy with Ms. X i.e. the complainant in the present

case. It is specifically alleged that her husband Samir Mulla was having illicit intimacy with respondent No. 4. He had given her a job in the said company. The husband of Irfana i.e. Samir Mulla is working in TATA Motors Jaguar Plant and Machinery, Pimpri-Chinchwad. He is working as motor mechanic technician. The complainant has contended in the first information report that she is working in TATA services. That Samir had disclosed to his wife that he intends to get married to respondent No. 4 and at the behest of the respondent No. 4 there used to be quarrels between the husband and wife. It is pertinent to note that on 22/9/2017, wife of the present applicant i.e. mother of the complainant and her brother Jaywant had filed a written application to the police inspector, Sangola Police Station stating therein that her daughter wanted to get married to Samir Mulla. The applicant had learnt that he is father of 2 sons and therefore, he had scolded his daughter. He had also threatened her that they would disown her. It is stated in the said complaint that Samir Mulla and his mother had been in the rented premises of the complainant and they had abused the applicant and threatened him that his entire future would be destroyed and that future of his daughter would be destroyed. They were also blackmailing the present applicant.

6 The learned Counsel for the applicant upon instructions

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submits that the police had refused to take cognizance of the said complaint and therefore, the complainant i.e. wife of the present applicant had to approach the Inspector General, Kolhapur and had filed an application. As on today, the learned Counsel for the applicant does not have copy of the said application. The investigating officer is not present in the court. One constable from the police station is present in the court. Upon query made by this Court, he has feigned ignorance in respect of application filed by the wife of the present applicant as well as any instructions from the Inspector of General, Kolhapur. It is submitted that the Investigating Officer i.e. Police Inspector of Sangli City Police Station was one Mr. R.D. Shelke. He has deputed a constable for instructing learned APP. However, he has no instructions. It is pertinent to note that in the order dated 3/8/2018, this Court had specifically passed an order as follows :

“1 Learned APP seeks time to call the investigating officer and enquire about the complaint lodged by the mother and brother of the complainant on 22/9/2017 to the PI of Sangli City Police Station and also about the complaint filed by one Irfana Samir Mulla, wife of Samir Mulla under the provisions of Protection of Women from Domestic Violence Act, wherein the complainant has been shown as respondent No. 4. Stand over to 14/8/2018.”

Despite this order, there is no cooperation from the Investigating

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Officer.

7 Learned Counsel for the applicant upon instructions has submitted that the complainant Ms. X is residing with Samir Mulla at present. Apart from the written complaint dated 22/9/2017, there is a complaint which is pending adjudication before the Judicial Magistrate First Class, in which the complainant has been shown as respondent No. 4. The learned Counsel for the applicant submits that the applicant herein has been falsely implicated only because he had refused to get his daughter married to Samir Mulla and was proposing to get her married elsewhere. She was directed not to associate with Samir Mulla and she was taken to Sangola. Hence being enraged by the same, the applicant has been falsely implicated. The applicant appears to be a patient of Coronary Artery disease and had been advised angioplasty on 7/6/2017 i.e. prior to registration of the FIR.

8 In view of the above discussion, the applicant deserves to be enlarged on bail.

9 The observations are prima facie in nature and restricted to

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the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered for discharge application or at the time of trial.

10 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. 25,000/- with one or more solvent sureties in the like amount.

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

11 Registry to send the copy of this order to the Inspector General, Kolhapur forthwith.

12 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Aruna
Sandeep
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by Aruna
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