

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

BAIL APPLICATION NO.2611 OF 2017

Sumit Mininath Chitare Applicant

Vs.

The State of Maharashtra Respondent

Mr. Raviraj R. Parmane for the Applicant.
Mrs. P.P. Shinde, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 10th January, 2018***

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 2nd February 2017 in Crime No.577 of 2016, registered at Daund Police Station on 6th October 2016. The investigation is completed and charge-sheet is filed on 25th March, 2017 against the applicant for the offences punishable under Sections 376, 452 read with 323 Indian Penal Code.

3 It is the case of the prosecution that on 6th October 2016, Mrs. 'X' lodged a report at the police station alleging therein that on 5th October, 2016 at about 9.00 pm., her husband had left the house to go to Dhumalvasti. After sometime, her grand mother-in-law also left the house and the first informant was watching TV. At about 10.30 pm., she heard knock on the door and had presumed that her husband had returned and therefore she opened the door. However, it was the applicant, who had pushed the door, due to which she had sustained injury. According to her, the applicant had taken disadvantage of the fact that she was alone at home and ravished her against her wish. That he had slapped her. She has further alleged that after sometime, she heard a knock on the door and when she opened the door, her husband was on the door step, soon the applicant had got dressed and escaped through the rear door of the house. Upon query made by her husband, she had disclosed the incident and thereafter they had approached the police station and lodged the report. On the basis of which, Crime No.577 of 2016 was registered against the applicant for the offences punishable under Sections 376, 341 and 323 Indian Penal Code.

4 Learned counsel for the applicant has submitted that the applicant herein happens to be a distant relative of the first informant. Learned counsel has drawn attention of this court to the

statement of the husband of the first informant. It is submitted that soon after she heard a knock on the door, she had opened the door. However, at night, 10.30 pm. the rear door was opened to facilitate the applicant to escape, or else, it would not have been possible for the applicant to flee from the house of the first informant. It is vehemently submitted that the alleged act is a consensual act. It is also submitted that on the basis of the material, it can be inferred that the husband had deliberately returned to the house within one hour. On the basis of the material and the submissions advanced across the bar, prima facie, it can be inferred in all probabilities the possibility that the alleged act is a consensual act cannot be ruled out.

5 However, it is made clear that the observations made hereinabove are prima facie in nature and are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. The applicant therefore deserves to be enlarged on bail. Hence, the order :

ORDER

1 The application is allowed.

2 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.

3 The applicant shall not reside in Alegaon, Taluka Daund,
District Pune till conclusion of the trial.

(*Smt. Sadhana S. Jadhav, J*)