

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

ANTICIPATORY BAIL APPLICATION NO.558 OF 2019

Fauziya Firoz Shaikh & Anr.	 Applicants
versus	
The State of Maharashtra	 Respondent

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- Mr. Yogen P. Kakade a/w. Bhagyashree Ghute, Advocate for Applicant.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. Chandrakant D. Bhosale, Sr. PI. Lashkar Police Station, Pune present.

CORAM : SARANG V. KOTWAL, J.
DATE : 13th AUGUST, 2019

P.C. :

1. By the previous order, it is recorded that application for applicant No.2 Jamir Yamin Shaikh was not pressed. Therefore, today I am only considering the application on behalf of applicant No.1.

2. The FIR is lodged by the prosecutrix on 3/11/2018 at Lashkar Police Station under Sections 376, 420, 506 r/w. 34 of IPC. According to the prosecutrix, she came in contact with one

Firoz Shaikh who was husband of the applicant No.1. The informant has stated that Firoz represented to her that if she deposited certain amount with him he would give good returns for her investment. The prosecutrix believed him. The prosecutrix and her family members in all gave Rs.12,45,000/- to him for investment. However, Firoz did not pay any returns as promised. When the prosecutrix demanded money from the applicant, he asked to her to come to his house. On 31/7/2017, the prosecutrix went to his house. According to her, at that time, the present applicant No.1 was also in the house. But at around 3.30 p.m. the applicant No.1 left the place and go to market. In the meantime, when she was not in the house, the main accused Firoz committed rape on the prosecutrix. When the applicant No.1 came back, prosecutrix told her about the incident. It is alleged that, at that time, applicant No.1, instead of helping her, threatened her and told her that her husband had the prosecutrix's embarrassing photographs and video clips in his mobile phone which would be made viral if the prosecutrix made complaint. The FIR further mentions few more occasions when Firoz took advantage of her

position and committed rape on her. However, applicant No.1 is not alleged to have any concern with the subsequent occasions. On this basis, the FIR is lodged.

3. Heard Mr. Yogen Kakade, Ld. Counsel for the Applicant and Ms. S. S. Kaushik, Ld. APP for the State.

4. Mr. Kakade submitted that on the date of incident the applicant No.1 was at Ahmednagar. She delivered a baby on 21/7/2017 and she was in the hospital till 27/7/2017. She was asked to remove her sutures on 31/7/2017. He therefore submitted that it was not possible for the applicant No.1 to remain present in Pune when the offence had allegedly taken place.

5. Ld. APP through the I.O. makes a statement that the applicant No.1 was in Ahmednagar from 20/7/2017 to 24/7/2017. It is evident from the medical papers of Shreedeeep Hospital at Ahmednagar. However, she submitted that the discharge card shows that the applicant No.1 was discharged on 24/7/2017 and therefore, it was possible for her to be present at Pune on 31/7/2017.

6. I have heard all these submission. The discharge card shows that the applicant No.1 was in the hospital at Ahmednagar from 20/7/2017 to 24/7/2017. She was asked to come back to the hospital on 31/7/2017 for removal of her suturing. Thus, in the last week of July 2017 the applicant really was in Ahmednagar. However, whether she was in Ahmednagar or in Pune on 31/7/2017 is a crucial question. The fact remains that the applicant No.1 had given birth to a child on 21/7/2017. Therefore, it was more probable that she was not in a position to participate in the act as alleged in the FIR itself. The applicant No.1 had undergone cesarean operation for delivery. Therefore, it is more difficult to believe that the applicant No.1 would have been present in Pune on 31/7/2017. She went for marketing when the alleged incident took place and came back to her house after marketing. It is rather difficult to believe that if the lady who was having sutures would go for marketing and would indulge in the act as mentioned in the FIR. Therefore, at this stage, I am inclined to grant protection of anticipatory bail to the present applicant No.1. Her custodial interrogation is not necessary. In

any case, the main allegations are directed against the accused Firoz. Hence, the following order.

ORDER

- (i) In the event of her arrest in connection with C.R. No.235/2018 registered at Lashkar Police Station, Pune, the applicant is directed to be released on bail on her executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in like amount.
- (ii) The applicant No.1 shall attend the concerned Police Station as and when called by the Investigating Officer.
- (iii) The application is accordingly disposed of.

(SARANG V. KOTWAL, J.)