

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

BAIL APPLICATION NO.1452 OF 2019

Chetan Yashwant Vitkar

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Priyal G. Sarda, for the Applicant.

Mr. Rajan Salvi, for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : JULY 03, 2019

P.C.:

1. The applicant is seeking bail in connection with C.R. No.32/2019 registered with Chaturshrungi Police Station, Pune under Section 376, 313 r/w. 34 of IPC.

2. Though the offence was registered under Sections 313 and 34 also, section 313 and 34 of IPC were dropped on 2/3/2019 by the Investigating Agency. The FIR is lodged by the prosecutrix on 8/1/2019. In her FIR, she has mentioned that she had married one Sable in the year 2016. Her husband used to assault her as he was addicted to liquor and therefore since the year 2017 she was

residing at her maternal house. She has categorically stated in her FIR that divorce had taken place in November 2017.

3. She has further mentioned in her FIR that since about six months before lodging the FIR, she had developed love affair with the present applicant and they also had physical relationship. In November 2018 she got to know that she was pregnant. The applicant avoided to marry her and therefore she had gone to Police Station. The family members of the applicant convinced her not to lodge any FIR and they told her that applicant would marry her. It is her further case that on 23/11/2018 she was taken to Mumbai. It is her case in the FIR that she was taken to hospital and there applicant's mother forced her to take some medicines. Because of it, her pregnancy was terminated. It is her case in the FIR that she was forced by the applicant and his mother to consume those medicines. After termination of pregnancy, the applicant avoided to marry her and thereafter she lodged the FIR.

4. Heard Mr. Priyal Sarda, Ld. Counsel for the Applicant and Mr. Rajan Salvi, Ld. APP for the State.

5. Ld. Counsel for the applicant submitted that he is a young boy of 21 years of age. The prosecutrix was married and though she had mentioned in her FIR that she was a divorcee that fact was not true and was admitted by her in her supplementary statement. The applicant was arrested on 9/1/2019 and since then he is in custody. The investigation is over and chargesheet is filed. He pointed out that pursuant to the supplementary statement of the prosecutrix, sections 313 and 34 were dropped.

6. Ld. APP submitted that the prosecutrix was promised that the applicant would marry her and therefore under this false pretext this offence was committed. Since it was a serious offence, the applicant does not deserve to be released on bail.

7. I have perused the entire chargesheet with the help of both Ld. Counsels. The supplementary statement given by the prosecutrix assumes importance. This statement was recorded on 26/2/2019. In that statement, she has made considerable improvement from her FIR. In her supplementary statement she has admitted that she had made false statement in the FIR that she

was a divorcee. She has further admitted in her statement that she had consumed the medicines in front of the Doctor and after that her pregnancy was terminated on 26/11/2018. Her statement also indicates that on 24/11/2018 they had gone to a temple and there the applicant had married her. She has further stated that she was residing with the applicant and his family. But after few days, there used to frequent quarrels and applicant used to assault her. Since 7/1/2019, she was driven out of applicant's house. Thereafter, she has lodged her FIR on 8/1/2019. Considering these circumstances, in this case, it is very clear that the prosecutrix was well aware that her divorce with her husband had not taken place. She was aware that the applicant could not have got married with her and the marriage would not have legal sanctity. In spite of this, she kept physical relations with him. She has admitted in her FIR that they were having love affair. She has changed her version in FIR in the circumstances under which she had consumed medicines. Though in the FIR she stated that she was forced to consume medicines, in the supplementary statement she has accepted that she had consumed those medicines in front

of the Doctor. The investigating agency has dropped Section 313 of IPC from the chargesheet. Considering all these aspects, taking into account the fact that the applicant is a young boy and that the prosecutrix was well aware about consequences of her act, it is doubtful whether Section 376 of IPC is made out against the applicant. Therefore, applicant deserves to be released on bail. Hence, the following order.

ORDER

1. The applicant is directed to be released on bail in connection with C.R. No.32/2019 registered with Chaturshrungi Police Station, Pune on his executing P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) with one or two sureties in the like amount.
2. The application is disposed of.

(SARANG V. KOTWAL, J.)