

shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2275 OF 2019**

Babu Shiva Devendra	]	Applicant
Versus		
The State of Maharashtra	]	Respondent

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Mr. Mubin Solkar a/w A. Sopariwala i/b Rameshwar G. Shatalwar for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

Mr. Amol P. Tamke, Police Inspector, Wadala T.T. Police Station, Malbar Hill.

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CORAM : REVATI MOHITE DERE, J.

DATE : 30th SEPTEMBER, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R. No. 94 of 2019 registered with Wadala T.T Police Station for the alleged offences punishable under Sections 376, 498A, 323, 324, 506, 34 of the Indian Penal Code and under Sections 4, 6 8 and 12 of Protection of Children from Sexual Offences Act.

3. Perused the papers. The applicant is the father-in-law of the complainant aged 19 years. According to the prosecutrix, she got married to the applicant's son on 29th May, 2017 and after marriage started residing at her matrimonial house. According to the prosecutrix, after marriage she realized that her husband Arunkumar was not working and was an alcoholic, pursuant to which she left her matrimonial house. It is further alleged by the prosecutrix that all the family members were harassing her and had forcibly obtained her signature on a stamp paper on 2nd October, 2018, for returning marriage expenses. It is alleged by the prosecutrix in her complaint/F.I.R dated 28th March, 2019 that when she was at home on 24th February, 2019 and her mother-in-law had gone to the Doctor and her husband was not at home and her sister-in-law, aged 17 years was sleeping in the house, the applicant came to the kitchen, took her to the bedroom and sexually assaulted her. The applicant is alleged to have sexually assaulted the prosecutrix again on 27th February, 2019.

4. Learned Counsel for the applicant submits that there are discrepancies in the complaint/F.I.R lodged by the prosecutrix, her 164 statement as well as in the history given by the prosecutrix to the Doctor. He submits that the prosecutrix in her 164 statement has stated that on 24th February, 2019, she was sleeping when the alleged incident happened,

whereas, in her F.I.R, she has stated that she was in the kitchen when the applicant forcibly grabbed her and took her to the room and sexually assaulted her. Learned Counsel for the applicant further submits that in the history given to the Doctor, there are no allegations of sexual assault on 27th February, 2019 as alleged in the F.I.R and the 164 statement. He further submits that the prosecutrix had refused her medical examination, soon after the incident and that the said medical examination was done only in March, 2019. Learned Counsel for the applicant further submits that although the alleged incident is stated to have taken place in February, 2019, the F.I.R was lodged after more than a month, thereafter. He submits that the aforesaid F.I.R has been lodged as the applicant's son had entered into a deed of mutual divorce with the prosecutrix on 2nd October, 2018. Learned Counsel submits that as the applicant has demanded money from the prosecutrix vide the said deed, the abovesaid complaint/F.I.R was lodged by the prosecutrix. Whether or not, the applicant is falsely implicated or not, is a matter which will be decided by the trial Court. Prima facie, there are discrepancies in the F.I.R, 164 statement and the history given to the Doctor. The applicant is in the custody since 28th March, 2019. Investigation is complete and the charge-sheet is filed.

5. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be released on cash bail in the sum of Rs. 20,000/-, for a period of six weeks;
- ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the applicant, in the Registry of the trial Court, within two weeks of his release;

vii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of applicant's bail.

6. The Application is allowed and disposed of in above terms.

7. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

[REVATI MOHITE DERE, J.]