

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

CRIMINAL BAIL APPLICATION NO. 2419 OF 2019

Uttam Shrirang Tule	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Satyavrat Joshi I/b. Aditya S. Ghatge, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

Mr. S. V. Patil, PSI, Marketyard police station, Pune, present.

CORAM :SARANG V. KOTWAL, J.

DATE :27th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 142 of 2019 registered with Marketyard Police Station, Pune, under sections 323, 354A, 376(2)(n), 376(2)(f), 498A, 504 and 506 r/w. 34 of the Indian Penal Code.

2. The FIR is lodged on 02/08/2019 by the prosecutrix herself. The applicant is husband of the prosecutrix's husband's sister. The prosecutrix has stated in her FIR that, she had got married with one Swapnil Kolpe on 06/04/2013. Her father had

given ornaments, appliances like oven etc. and had spent for marriage expenses. Her FIR shows how matrimonial discord started between the couple and how the mother-in-law was instrumental in that. Her FIR further mentions that Swapnil's elder sister Snehal was residing in the same area. The applicant is Snehal's husband. Snehal and the applicant regularly used to visit Swapnil's house. There are allegations that Snehal had taken away prosecutrix's ornaments forcefully and had not returned them. There are allegations against other sister-in-law of the prosecutrix about taunting her for not spending much during marriage. There are allegations that the prosecutrix's husband started residing with Snehal and the applicant since March, 2017. He started demanding money from the prosecutrix and her parents. The FIR further mentions that, on 06/08/2017 when the prosecutrix and her mother-in-law were in the house, Snehal and the applicant came to their house. The applicant entered her bed room and tried to commit rape on her. The prosecutrix complained about it to her mother-in-law and applicant's wife Snehal. She also told about it to her father-in-law. All of them told the prosecutrix

that it would not be repeated again and that she should not tell it to anybody. In the same month, in August, 2017 when she was alone in the house, the applicant came to her house and committed rape on her. She has further stated that he repeated the act on 12/02/2018 again when she was alone in the house. She had narrated the incident to her husband and in-laws but they pleaded with her that she should not tell it to anybody, otherwise, Snehal's married life would be in serious trouble. It is further mentioned in the FIR that her father-in-law called her father and asked him to take the prosecutrix with him. Since 25/10/2018 the prosecutrix was residing with her parents. Thereafter the prosecutrix lodged her FIR on 02/08/2019 on the basis of these allegations.

3. Heard Shri. Satyavrat Joshi, learned counsel for the applicant and Shri. Prashant Jadhav, learned APP for the State.

4. Shri. Joshi submitted that the incident as alleged in the FIR was neither possible nor probable. She has not approached any authority for more than one and half year from the date of incident. She was residing separately with her father from October,

2018 and even thereafter no allegations were made by her. He invited my attention to a matrimonial petition filed by the prosecutrix's husband on 07/06/2019 in the court of Civil Judge, Senior Division, Pune, vide M.P No.929 of 2019. The prosecutrix had appeared before that court through her lawyer on 23/07/2019 and thereafter this FIR came to be lodged. He, therefore, submitted that, to put pressure on her husband and in-laws, this FIR is lodged. He submitted that the applicant is arrested on 04/08/2019 and since then he is in custody on false allegations.

5. Shri. Jadhav, learned APP, on the other hand, opposed this application and stated that the chargesheet is likely to be filed within a week and, therefore, at this stage, this application should not be entertained.

6. I have considered these submissions and I have perused the investigation papers in respect of investigation carried out by the investigating agency. Since the charge-sheet is likely to be filed very shortly, the investigation papers consists of entire investigation carried out in this matter. Besides the statement of the prosecutrix, the investigation papers include spot panchanama

and medical examinations of the parties. Obviously, after lapse of more than one and half year, this investigation was not likely to reveal anything significant. The FIR makes allegations that on two occasions the applicant had committed rape on the prosecutrix i.e. in the months of August, 2017 and February, 2018 when she was alone in the house. Besides these two occasions, once before the applicant had tried to outrage her modesty. On the first occasion, he did that act when the prosecutrix's mother-in-law, as well as, applicant's wife were present in the house. Therefore, it is difficult to believe that such incident could have happened. The most important factor in this case is that, from February 2018 till August 2019 the prosecutrix had not made her grievance known to any authority. She was under protection of her father since October, 2018. This long delay, at this stage, raises doubt about her version. This has to be looked into in the background of the fact that her husband had filed Marriage Petition in the month of June 2019, she had appeared through her advocate in July 2019 and thereafter this FIR is lodged. Therefore, there is considerable force in the submission of Shri. Joshi that this FIR was lodged to put

pressure on the husband and in-laws of the prosecutrix. Though, all these submissions and facts will have to be decided after the evidence is led during the trial. The trial court shall not be influenced by any of the observations made in this order. However, at this stage, sufficient doubt is created in respect of version of the prosecutrix. Therefore, though the offence is quite serious, the consequences of keeping an innocent man in custody is equally serious. Therefore, considering totality of the circumstances, I am inclined to grant bail to the applicant.

7. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 142 of 2019 registered with Marketyard Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)