

VRJ

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

BAIL APPLICATION NO.823 OF 2023

Wasim Badshah Alias Badshaha Shaikh ... Applicant
V/s.
 The State of Maharashtra & Anr. ... Respondents

Mr. Nitin Gaware Patil with Mr. Anandmaya Dhorde for
 the applicant.

Mr. Amit A. Palkar, APP for the respondent No.1/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 27, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973, in connection with C.R. No.610 of 2022 dated 8th December 2022 registered with Daund Police Station, Taluka Daund, District Pune for offences punishable under sections 376, 109, 504, 506 read with section 34 of the Indian Penal Code, 1860 and section 3 and 25 of the Arms Act.

2. According to the prosecution, the applicant and prosecutrix are residents of the same locality. On 5th May 2021, the accused No.1 Rajiya visited the informant's shop and purchased clothes. Thereafter, when the informant visited accused No.1's home she expressed that the applicant is impressed by the informant. The informant showed her disinclination and left her house.

On 15th November 2021, accused No.1 apologized for the incident and assured not to repeat such incident in future. On 19th November 2021, accused No.1 invited the informant in her house alleging that there was marriage anniversary function. Around 07:00 p.m. when the informant reached at the home of accused, accused spiked the drink. It is alleged that applicant forcefully married the informant. Thereafter, under the threat of pistol had forcefully sexual intercourse with the informant. The applicant threatened her to make her video viral and under the said threat the applicant forcefully had several intercourse with the victim. Ultimately, on 22nd August 2022 at 08:00 a.m. in the morning when informant's husband was at out station, the applicant forcefully had several sexual intercourse with the informant and threatened her to divorce her husband and marry the applicant otherwise he will kill the informant and her family. She, therefore, lodged a report on 8th December 2022.

3. On perusal of the material on record, it appears that first incident alleged is of 19th November 2021. According to the prosecution, thereafter, the applicant had several sexual intercourse with the informant. The last incident of sexual intercourse is of 22nd August 2022. Report is lodged on 8th December 2022. The informant is a married woman. It is well settled that delay in lodging report as regards provisions under section 376 of itself no ground to disbelieving the case. However, on overall consideration of the facts and material on record, it prima facie appears that till the prosecution establishes its case during trial, the applicant deserves to be released on bail as he has

been arrested on 13th December 2022. The applicant has antecedents of bodily offences; however, considering the prima facie case made out by the applicant, the antecedents need to be considered by the Trial Court at the time of trial. Hence, following order:

- a) The applicant shall be released on bail in connection with C.R. No.610 of 2022 dated 8th December 2022 registered with Daund Police Station, Taluka Daund, District Pune for offences punishable under sections 376, 109, 504, 506 read with section 34 of the Indian Penal Code, 1860 and section 3 and 25 of the Arms Act, on furnishing PR Bond in the sum of Rs.50,000/- along with one or two sureties in the like amount;
- b) The applicant shall mark his presence on first Saturday before the police station concerned between 11:00 a.m. to 02:00 p.m. of each month;
- c) The applicant shall remain present before the Trial Court on each and every date unless exempted by the Trial Court;
- d) The applicant shall not contact directly or indirectly with the victim and her family members during pendency of the trial;
- e) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

- f) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.
4. The bail application is disposed of in above terms.

(AMIT BORKAR, J.)