

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

CRIMINAL BAIL APPLICATION NO. 2294 OF 2022

Aziz Vazir Shaikh	...Applicant
Versus	
The State Of Maharashtra & Anr.	...Respondents

Mr. Karim Pathan a/w Mr. Fazlurraliman Shaikh for the Applicant.
Ms. Anamika Malhotra, APP, for the Respondent No.1-State.
Mr. Karma Vivam a/w Mr. Anvay Pawar for the Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 13th OCTOBER, 2023.

P.C. :

1. By this application, applicant is seeking bail in C. R. No. 529 of 2018 registered with D. N. Nagar Police Station, Andheri, Mumbai for the offences punishable under Sections 376(2)(n), 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 (for short "IPC").

2. It is prosecution's case that complainant is daughter-in-law of the applicant. It is alleged that after marriage, when complainant

was residing with her husband, applicant had forcefully sexually assaulted her on several occasions. It is alleged that applicant had threatened her not to tell this fact to anyone. When complainant tried to tell this fact to her husband but he did not pay attention to it. The mother-in-law and sister-in-law of complainant used to instigated her husband against her. They harassed complainant mentally and physically. Thereafter, complainant filed complaint against her husband and in-laws and applicant.

3. It is contention of learned counsel for the applicant that in complaint, it is mentioned that first incident happened in February, 2017 but, complaint was lodged on 13th November, 2018. There is delay of one year and nine months in lodging the complaint. Applicant has been falsely implicated in this case to settle the family dispute between complainant and her husband i.e. son of applicant. Learned counsel further submitted that applicant is the uncle of complainant. The complainant was residing with the applicant and his family prior to her marriage. The narrations given by the complainant are impossible to believe as entire family including three sons, one daughter, wife and applicant himself were residing in

a small room of chawl in a joint family and for almost 1 ½ year, the entire family including female family members who were housewives were going out of the house everyday for 1 ½ year. Learned counsel further submitted that complainant has lodged false complaint against the applicant and his family members, so that they can bow down before her demands. Learned counsel further submits that at the time of filing FIR in the month of November, 2018, the complainant was residing along with her husband and children at Nallasopara in a rented house. By keeping the FIR pending, she informed the police not to arrest applicant and his family members till they are behaving as per her wishes. Applicant is behind bar for more than two years. Yet charge has not been framed. The other accused have been released on bail. Hence, requested to allow the application.

5. It is contention of learned counsel for the respondent no.2 that complainant has made serious allegations against her the father-in-law. Due to pressure of family, she could not tell said facts to the other family members. Though, there is delay in filing FIR but, she has explained in complaint why delay was caused to lodge the

complaint. It is well settled position of law that sole statement of victim is sufficient to consider the allegations levelled against that accused. The complainant has categorically stated that applicant had sexually assaulted her on several occasions. After lodging FIR, applicant and family members were threatening the complainant. There are allegations of stalking also. There is *prima facie* case against the applicant. If applicant is released on bail, he may threaten the victim / complainant and his family members. Hence, requested to reject the application.

6. Learned APP reiterated the submissions of learned counsel for the respondent no.2.

7. I have heard all learned counsel. Perused FIR and charge-sheet.

8. In complaint, it is mentioned that first incident happened in February, 2017 and FIR is lodged in November, 2018. There is delay in lodging FIR of around one year and nine months. Complainant has stated that, she had informed her family members

about the incident but, statement of mother of complaint is not recorded by the police. The statements of brother and sister of complainant are recorded. In the said statements, the allegations against the applicant have not been mentioned. Applicant is behind bar for more than two years. Investigation is completed and charge-sheet has been filed. It may take time to conclude the trial.

9. Considering the above facts, further detention of applicant's is not required.

10. In view of above, I pass following order.

ORDER

- (i) Applicant be enlarged on bail in C. R. No. 529 of 2018 registered with D. N. Nagar Police Station, Andheri, Mumbai, on executing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (ii) Applicant shall attend the concerned police station once in a month i.e. on first Saturday between 11:00 a.m. to 2:00 p.m. till framing

of charge.

(iii) Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

(iv) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witness or any person concerned with the case. (v) Applicant shall not contact to the complainant or her children and shall not go area where she staying or witnesses staying.

11. The application is allowed in the aforesaid terms and is accordingly disposed of.

12. It is made clear that the above observations are made only for the purpose of granting bail and the Trial Court shall decide the case on its own merits in accordance with law and uninfluenced by

the observations made in this Order.

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

(SHIVKUMAR DIGE, J.)