
(2017) 02 BOM CK 0219
In the Bombay High Court
Case No : 284 of 2017

Irshad Ahmed Abdul Haq

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#), [Section 439](#) - Direction for grant of bail to person apprehending arrest - Special powers of High Court or Court of Session regarding bail

Citation : (2017) 02 BOM CK 0219

Hon'ble Judges : Sadhana S. Jadhav

Bench : SINGLE BENCH

Advocate : Akhilesh Dubey, Vagish Mistry, Rahul Sharma, Paritosh Shukla, M.G. Patil, Sunil K. Kadam

Judgement

1. Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.
2. This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 597 of 2016 registered at Wadala T.T. Police Station for offence punishable under section 498A, 313, 406, 323, 324, 504, 506 read with section 34 of the Indian Penal Code.
3. It is the case of the prosecution that on 17/12/2016 Yasmin Irshad Shah, wife of the present applicant lodged a report at the police station alleging therein that she has married the applicant on 26/11/2010. Her parents had given her golden and silver ornaments, valuable items and one motor cycle to her husband at the time of marriage. However, she was continuously harassed by her husband and her inlaws for fetching valuables from her parents.
4. It is alleged that she was carrying pregnancy in the month of November, 2016. Her husband had taken her to the hospital and had coerced her to abort the said pregnancy. He had also threatened her that upon failure to abort the said

pregnancy, he would divorce her. She was taken to a private hospital. Before going to the hospital, she was assaulted by leather belt and her inlaws and her husband had kicked her on her abdomen with kick and fist blows. That she has suffered severe bleeding and she called upon her brother and was admitted in Sion Hospital. On the basis of the said report Crime No. 597 of 2016 is registered against the applicant.

5. The learned Counsel for the applicant submits that in fact, she had voluntarily aborted the said pregnancy and has falsely implicated the present applicant. It is also submitted that in fact, he had enquired with her and at that time, she had disclosed that she has aborted the pregnancy. The learned Counsel further submits that the applicant herein had filed application before the Sr. P.I. of Wadala T.T. Police Station that he is being threatened by the brother of the first informant and that he had requested the police to take appropriate action. It is submitted that the applicant has been falsely implicated in the present case.

6. The learned Counsel for the applicant has also placed on record the case papers of Jyoti Polyclinic and Nursing Home. It is submitted that she had given consent and therefore, it cannot be said that the applicant had forced her to undergo abortion. The case papers are take on record and marked as Article X for the purpose of identification.

7. On perusal of the said medical case papers, it appears that on 3/12/2016 she was diagnosed with febrile illness with burning sensation. History of 2 months amenorrhea. It is specifically endorsed that "Not willing for admission, overt (DAMA) Discharge against medical advise."

8. In the course of investigation police recorded the statement of Rubina who was working as nurse in Jyoti Nursing Home since 2003. She has disclosed to the police that on 3/12/2016 in the afternoon at about 12.20 p.m. the patient came alongwith her husband. Her husband had informed the nurse that his wife is to be aborted. He had furnished the sonography report of his wife, which indicate that she was carrying pregnancy of 17 weeks. The nurse had disclosed to the husband that she is carrying pregnancy of 3 and half months. Nurse has further admitted that she has prepared the admission papers and sent the patient to Dr. Gazi Noor Rehman. She had prepared the papers showing that she has febrile illness. Dr. Gazi has accepted Rs. 14,000/from the patient but had not given any receipt to the patient. The doctor had not called upon Dr. Smita Datta, but had written her name on the admission papers. Dr. Smita Datta had never examined the said patient. The patient was admitted in the hospital, but it was shown on the papers that she has been discharged against medical advise. The nurse had administered Mizo Frost Tablet, which is administered for the purpose of abortion. That sometime at about 10.30 p.m. the foetus was discharged from the ovary of patient. The nurse had aborted fetus. Dr. Rehman had informed the said nurse to dispose of the fetus immediately. Thereafter, the said foetus was disposed of by the nurse in canal.

9. The learned APP upon instructions submits that nurse Rubina has been arrested and the investigating officer is taking steps to arrest Dr. Gazi Rehman.

10. The learned Counsel for the applicant has placed reliance upon the consent of the patient. However, it is clear that it is not a consent for abortion. It is a consent for admission. The records have been fabricated to show that the patient was discharged against medical advise, although she had undergone abortion in the said hospital in the intervening night. It is a heinous offence. The applicant, doctor and nurses have connived to abort the foetus of the complainant without her consent and by fabricating the records. It is clear that she was taken to the hospital by her husband.

11. Taking into consideration the material collected in the course of investigation and upon perusal of the record, this Court is of the opinion that the applicant does not deserve to be enlarged on bail.

12. The observations are restricted to an application under section 438 of the Code of Criminal Procedure, 1973 and the learned Sessions Judge shall not be influenced by the same while considering an application under section 439 of the Code of Criminal Procedure, 1973.

13. The application being sans merits stands rejected and dispose of accordingly.