

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**LD VC ANTICIPATORY BAIL
APPLICATION NO. 177 of 2020**

Yusuf Usman Shaikh .. Applicant

Vs.

State of Maharashtra .. Respondent

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Mr. Mukesh Vashi, Sr. Advocate i/g M/s. A.A. Siddiquie & Associates for the Applicant.

Ms. P.P. Shinde, APP for the State.

Investigating Officer Mr. Praksh Tukaram Varke, P.I., Mulund Police Station, is present.

CORAM: BHARATI DANGRE, J.

DATED : 9th JUNE, 2020.

P.C:-

1. The Applicant is arraigned as an accused in FIR No.208 of 2020 registered with Ghatkopar Police Station. The Applicant is a Police Sub-Inspector attached with Ghatkopar Police Station. On the basis of the FIR registered at the instance of the Complainant Samiya Shaikh, he is charged for offences punishable under Sections 376(2), 377, 323 and 504 of the IPC along with offence punishable under Section 3 of the Muslim Women Protection Act.

2. On perusal of the material on basis of which the FIR was registered against the Applicant, it can be seen that the Complainant

had alleged that the present Applicant though married and having two children from his wife Parveen Shaikh solemnised a marriage with her as per Muslim custom and practice on 03/12/2018. She conceived out of this marital relationship with the Applicant in January, 2019. At the instance of the Applicant, the Complainant was required to terminate the pregnancy. She again conceived out of the said relationship and delivered a baby girl on 12/12/2019. The allegation against the present Applicant as levelled in the complaint is that thereafter the Applicant forwarded a message on her mobile pronouncing 'Talaq' by sending message on three occasions resulting into dissolution of marriage and her further allegation is that he started avoiding her and refused to take care of the newly born daughter and there are also several allegations about commission of unnatural sex with her. With these allegations, offences have been registered against the Applicant.

3. Going by the allegations in the complaint, it is not the case of the Complainant that she was forcibly made to enter into sexual relationship attracting the provisions of Section 376 as she has admitted that this was done after the marriage was performed as per the Muslim customs. The further allegation is that she was divorced on phone by reading Talaqnama at the instance of the Applicant, which would attract different offence and since provisions of Muslim Women Protection Act is now added and the same is a bailable offence for which the Applicant can be admitted to bail. As far as the offence under Section 376(2) is concerned, it amount to forcible sexual intercourse. According to the Complainant, she had the sexual

relations with the Applicant after performing the marriage as per the Muslim customs. In the circumstances, no custodial interrogation is necessary and moreover there are no chance of the Applicant fleeing. He is working as Police Sub Inspector in Ghatkopar Police Station in which the FIR is lodged on prima facie reading of FIR. The Applicant is entitled to be released on bail in the event of his arrest. Hence the following order:

ORDER

- (a) In the event of his arrest, the Applicant - Yusuf Usman Shaikh shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
 - (b) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
 - (c) The Applicant shall make himself available as and when required by the Investigating Officer.
4. The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J