

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 372 OF 2015**

Kaushal Vaidya @ Sandeep Suresh Khandalkar ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. A. H. H. Ponda with Mr. Shailesh Kharat for the Applicant

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

FRIDAY, 27TH FEBRUARY, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 503 of 2014 for the alleged offences punishable under Sections 376, 420, 417 of the Indian Penal Code.
3. The complainant is the prosecutrix, aged 35 years and is a divorcee. The prosecutrix has a son aged 15 years, who is studying in a School at Panchgani. According to the prosecutrix, after her divorce, on the say of the parents, she had registered herself with Shaadi.com and it is

through this Shaadi.com that she came in contact with the applicant. The prosecutrix thereafter was in contact with the applicant through phone. On 15th August, 2013, the prosecutrix is stated to have met the applicant for the first time at Café Coffee Day, Vileparle (East), where the applicant allegedly introduced himself as Kaushal Vaidya, age 38 years, occupation Container Business. As the applicant started meeting the prosecutrix regularly and as they started liking each other, the applicant went with the prosecutrix to Sangli to meet her parents on 6th October, 2013. It was decided that the marriage would be performed some time in December, 2013 or January, 2014. Thereafter, the prosecutrix met the applicant frequently at her residence or at his office. On 18th January, 2014, it is alleged that the applicant asked the prosecutrix to meet him at his Bandra residence. Trusting the applicant, she visited the residence of the applicant, who, on the false pretext of marriage, committed forcible sexual intercourse with the prosecutrix. Thereafter, on several dates the applicant is stated to have called the prosecutrix at his residence and by engaging her in sweet talks and false promise of marriage, is alleged to have committed forcible sexual intercourse with her. It is alleged by the prosecutrix that when she broached the topic of marriage, the applicant told her that there

were some business problems, which needed to be tackled, after which, he would marry her. At the relevant time, the applicant was in contact with the parents and brother of the prosecutrix and hence, the prosecutrix is stated to have trusted the applicant. It is alleged that everyone in her family, her friends, relatives and business colleagues were aware that the prosecutrix was going to marry the applicant. It is alleged that thereafter, the applicant told the prosecutrix that he was suffering losses in his business and was in need of money and that he would purchase one whole container of S. D. Cards, which would earn him huge profits. According to the prosecutrix, trusting the applicant, she collected an amount of Rs. 15,00,000/- from her friends and relatives, between April to May, 2014 and made part payments to the applicant at his office and part payment at his Bandra residence. The applicant is stated to have assured the prosecutrix that he would return the entire amount and assured to even sell his vehicle to make payment to the prosecutrix. On 24th August, 2014, the applicant is alleged to have asked the prosecutrix to come to Popular Car Dealer at Chakala Petrol Pump, Andheri, where he was going to sell his vehicle and return the money to the prosecutrix. After waiting for some time, as the applicant did not return, she visited the applicant's flat at Pali Hill and came

to know that it was a rented house and that the applicant had left the same in the month of June. Accordingly, after seeking information about the applicant, she went to Sion, where the applicant was residing and showed the photograph of the applicant to the watchman of the Society, who disclosed that the applicant was not Kaushal Vaidya but was Sandeep Suresh Khandalkar, who was married and was residing with his family. Pursuant to the same, a complaint as aforesaid came to be lodged by the prosecutrix with the Bandra Police Station.

4. Learned Counsel for the applicant submitted that the investigation is complete and charge-sheet has been filed. He submitted that that prosecutrix was an adult and it was evident that the relations between the two were consensual and hence, the same cannot be termed as rape, an offence under Section 376 of the Indian Penal Code. Learned A.P.P opposed the bail application.

5. It is not disputed that the prosecutrix met the applicant through Shaadi.com and that the applicant had visited the parents of the prosecutrix and that the applicant is alleged to have promised her that he would marry

her. *Prima facie*, it appears that the applicant had misrepresented to the prosecutrix, by not disclosing his true identity. As far as the amount of Rs. 15,00,000/- is concerned, there are statements of some of the witnesses who state that the applicant was paid the amount. Be that as it may, the applicant has been in custody from 3rd October, 2014. Investigation is complete and charge-sheet is filed. Considering the same, the applicant is directed to be released on bail on the following terms and conditions :

ORDER

- (i) The applicant Kaushal Vaidya @ Sandeep Suresh Khandalkar be released on bail in connection with case No. C.R. No. 503 of 2014 registered with Bandra Police Station, on executing PR Bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount;
- (ii) The applicant shall not tamper or attempt to contact the prosecutrix or any witness concerned with the case;
- (iii) The applicant shall not enter Goregaon;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the

Court seized of the matter and to the Investigating Officer of the Bandra Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant shall attend Bandra Police Station once in a month on the first Saturday of every month between 11:00 a.m. to 12:00 noon till the conclusion of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

6. The aforesaid observations are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.