

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1095 OF 2015

Rakesh Shivaji Palande. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Ashwini M. Desai, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. Popat Mule, PI, MIDC Police Station, Andheri (E), Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 6, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 17/1/2014 in Crime No. 42 of 2014 registered at MIDC Police Station for offence punishable under Section 376, 384, 323 of the Indian Penal Code and Section 66(E) of the Information Technology Act. At the outset, the

learned APP submits that in the present case, charge is framed and the Sessions Case is scheduled for recording of evidence on 10th August, 2015.

3 It is the case of the prosecution that on 16/1/2014 at about mid-night the complainant had approached the police station and lodged a report that she was acquainted with the applicant through common friend. That they used to be in the company of each other intermittently. According to the complainant, on 16/10/2013 the applicant had been to the house of the complainant. She had offered water to him. However, he had informed her that he has brought Maza cold drink and that they should have some. In the meanwhile, the applicant wanted to go to wash room. She had obliged. Soon thereafter, they had consumed the cold drink brought by the applicant. The complainant was feeling dizzy and was in haze condition and does not know what happened thereafter. When she woke up after two hours, she saw that the applicant was sitting on the window in her bed room. After 4 to 5 days of the alleged incident,

the applicant is alleged to have called the complainant and then had shown her obscene images, he had purportedly taken on 16/10/2013. He had threatened her that he would circulate the same in the eventuality that she would not oblige him. He had solicited sexual favours from the complainant on the ground that she would be exposed to the social obloquy. The complainant has stated that she was ravished almost 11 times against her wish. On the basis of her report, Crime No. 42 of 2014 was registered.

4 Perused the record. Supplementary statement of the complainant was recorded on 20/2/2014. The complainant has stated that on 16/10/2013 she had poured the contents of the Maza bottle in two different glasses and thereafter the applicant had been to the wash room to freshen up. They had consumed the cold drink from different glasses. It is further alleged that the applicant herein had demanded Rs. 10 Lakhs from the complainant to save herself from social obloquy. It is alleged that he was black mailing her on the basis of the pictures taken by him on 16/10/2013.

5 Learned Counsel for the applicant vehemently submits that the applicant is much younger than the complainant. That the relationship is admitted. According to the learned Counsel, in the first information report, although there were no specific allegation in respect of extortion, Section 384 of the Indian Penal Code has been levelled against the applicant. The learned Counsel for the applicant submits that the complainant had stated in the first information report that they had consumed said cold drink. That the same has been clarified by way of supplementary statement which was recorded two months thereafter showing that they had consumed cold drink from two different glasses.

6 The learned Counsel for the applicant further submits that since there were no specific allegations in respect of offence under Section 384 of the Indian Penal Code, the same has been clarified by way of supplementary statement recorded two months thereafter that the applicant had demanded Rs. 10 Lakhs. It is further submitted that the

allegations levelled against the applicant are full of inherent improbabilities and therefore, the applicant deserves bail.

7 Upon perusal of the record, this Court is of the opinion that it would not be necessary to record a finding at this stage that the allegations levelled by the complainant is an impact of falsehood, since it would affect the trial, which is soon to commence. Recording of a finding of falsity of allegations would naturally hamper with the administration of justice, since the statement of the complainant in a case under Section 376 of the Indian Penal Code can be relied upon simplicitor without there being any corroborative evidence, at least at this stage. The complainant could be confronted with her statement in the cross-examination and at this stage, this Court is of the opinion that it would not be proper to cause prejudice to the case of the complainant. Substantive evidence is yet to be adduced by the prosecution and the falsity or truthfulness will be tested on the touch stone of the cross-examination. Hence, this Court is not inclined to grant bail.

8 The learned Counsel for the applicant submits that in fact, no cell phone was seized, but a laptop was seized. That the learned APP upon instructions from the Investigating Officer has submitted that no incriminating material was found in the laptop. Further learned APP upon instructions submits that the charge in the present case has been framed on 7/7/2015. This has to be read in consonance with the order dated 25/3/2015 rejecting the application for bail, wherein the learned Sessions Court has observed that the charge was already framed and the trial is soon to commence.

9 The application being sans merit stands rejected. The learned Trial Court shall decide the trial on the basis of the substantive evidence adduced by the prosecution without being influenced by the observations made herein above.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)