

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.846 OF 2015
WITH
CRIMINAL APPLICATION NO.563 OF 2015**

Vikas Vilas Thorve	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. Shreekant Gavand, Advocate for the Applicant.
Ms. Veera Shinde, APP for Respondent – State.
Mr. Suresh Sabrad, Advocate for the Intervener.
IO. Mr. M.N. Mhatre (PSI), Neral police station, Raigad present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 15, 2015**

P.C.:

. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 376 and 420 read with 34 of the Indian Penal Code in C.R. No. I-56 of 2015 registered with Neral police station, Raigad.

2. The first information report is registered at the instance of the prosecutrix on 22nd May, 2015. It is the case of the prosecutrix that since 2002 she was in love with the applicant/accused. However, she did not disclose it to her mother. Then on 5th May, 2009 she got

married to some other person. After marriage, she had good family life with her husband. She shifted to Badlapur. The applicant/accused used to meet her and to take her out in the absence of her husband and they continued their sexual relationship. At that time, he told her to take divorce from her husband and he could not live without her. However, he persuaded her. Thereafter, she told her husband about her relationship with the applicant/accused and finally she divorced her husband in July, 2009 by consent. It is the case of prosecutrix that she allowed him to have sexual relationship with her because he promised her to marry. The family members from the house of the applicant/accused also accepted her as their daughter in law. She used to go with him as his wife. However on 20th April, 2015 the applicant/accused got married with some other girl and therefore she gave this complaint on 22nd May, 2015 against the applicant/accused. However, he not only broke the promise but also circulated her obscene video clip in Neral.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused has not committed the offence of rape. The relationship was consensual and the consent was not

obtained by fraud. He relied on the affidavit. He submitted that the allegations of the obscene photographs and video clip which are made in the supplementary statement of the complainant dated 29th May, 2015 was the first disclosure on record in respect of the video clip. He submitted that two days prior to that i.e. on 27th May, 2015 the affidavit was filed by the complainant before the learned Sessions Judge. There was no whisper about the video clip or the circulation of the said video clip. The learned counsel has submitted that what prevented the complainant to inform in her complaint or supplementary statement or in the affidavit about the said video clip if at all they were existing and circulated, without her consent. He submitted that the prosecutrix had met the family members of the would be wife of the applicant and she showed their photographs to the family members of girl's side. The said girl thereafter refused to marry. Therefore, the uncle of the applicant/accused on 13th December, 2014 gave complaint to police about it. He relied on the said complaint given by his uncle. He further submitted that the applicant/accused is having a Government service in Railway and therefore the complainant is interested in his arrest, so that he would lose his job. He prayed for pre arrest bail.

4. The learned prosecutor and the learned counsel for the complainant/intervener both opposed the application. Both have submitted that it is not a case for pre arrest bail. The learned prosecutor pointed out two obscene photographs along with a letter anonymously written by one anonymous senior citizen to the investigating officer which was received by courier by the investigating officer. She submitted that the investigating officer has received two obscene photographs of the prosecutrix. This shows that the applicant/accused has circulated these photographs. The learned counsel for the complainant has submitted that there is obscene video clip of both the complainant and applicant/accused. This video clip was sent by the applicant/accused through *Bluetooth* and thus it shows that the applicant/accused is having this material and he was circulating these photographs and video clips to malign the complainant. It is argued that the custody of the applicant/accused is required to procure the original video clip. It is also submitted that the applicant is circulating video clip in village Neral.

5. Perused the first information report, the papers, the affidavits filed by both the parties and the photographs of the

prosecutrix. *(After perusing the photographs of the prosecutrix, they are handed over in sealed envelope to the prosecutrix).*

6. It is unfortunate case of a frustrated love affair. The prosecutrix is 30 years old lady. As per her complaint, she was in love with the applicant/accused. However, she married to some other person. Despite of her marriage, she continued her relationship with the applicant/accused. She took divorce and continued physical relationship with the applicant/accused. According to the prosecutrix, a promise of marriage was given by the applicant/accused. However, *prima facie* it is difficult to accept when the prosecutrix is major and a married woman, she consented for sex only because there was promise to marry by a person. Such woman is responsible for her decision to have sex. Even though a promise to marry was given, subsequently if at all the party feels that it is not possible to continue their relationship as they are not compatible and there are differences of opinion, then that can not be said that it is a cheating.

7. As the circulation of the obscene photographs is concerned, the submission of learned counsel for the applicant/

accused are important, as there was no whisper in the complaint dated 22nd May, 2015 or in the affidavit filed before the Sessions Court on 27th May, 2015 in respect of taking out obscene photographs or video clips. On query, to the learned counsel for the complainant/intervener, he informs that these were sent by the applicant/accused on 16th and 17th September, 2014 by *Bluetooth*. If these clips were sent to her, then why she did not utter anything against it to anybody, even at the time of lodging first information report. A possibility of the shooting video clip might have done by the consent of both the parties can not be ruled out. So also the prosecution could not give any single incident of circulation of video clip to any person in Neral as alleged. It is a general statement. Though these obscene photographs were received, the police not even framed the charge to that effect also. In view of this, a possibility of the applicant/accused being a Government servant and they were having love affair which is frustrated due to his marriage, so the prosecutrix acting out of vengeance, may not be ruled out. The things may be morally wrong. The prosecutrix may be, as she said might have received a promise from the applicant to marry and the applicant might have committed a moral wrong but *prima facie* I am of the view that this is the case to

protect the applicant by granting pre arrest bail.

8. Hence, I grant anticipatory bail as under:

- a) In the event of arrest, the applicant/accused be enlarged on bail upon furnishing P R. Bond in the sum of Rs. 30,000/- (Thirty Thousand) with one or two solvent surety/s in the like amount;
- b) He shall cooperate with the investigating officer and shall attend the concerned police station once in a week on every Saturday in between 4 pm to 6 pm.
- c) He shall not indulge in any other criminal activity or pressurize the complainant.
- d) The applicant/accused is directed to hand over his cell phone, sim card and memory card to the investigating officer.

9. The anticipatory bail application stands disposed of on the above terms. In view of the above, the intervention application No. 563 of 2015 is disposed of.

(MRS.MRIDULA BHATKAR, J.)