

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1525 OF 2016

Prashant S/o Ganesh Gawai
Age : 31 years,
Occupation : Private Service,
Residing at 160, Pethe Nagar,
Bhavsingpura,
Tq. and District Aurangabad .. Applicant

Vs.

The State of Maharashtra
Through the Police Inspector,
Police Station, Cantonment
(Chavni), Aurangabad .. Respondent

Mr. A.S. Shejwal, Advocate with Mr. P.P. Khandagale Patil,
Advocate for the applicant
Mr. U.S. Mote, A.P.P. for the respondent-State
Mr. A.S. Bayas, Advocate for assist to A.P.P.

CORAM : M.T. JOSHI, J.
RESERVED ON : 05/04/2016
PRONOUNCED ON: 07/04/2016

ORDER :

Heard both sides.

2. The present applicant, who is apprehending arrest at the hands of Cantonment (Chavani) Police Station, Dist. Aurangabad in crime no. 32 of 2016 for the offences punishable under section 498-A, 406, 377 r/w. 34 of the Indian Penal Code, is praying for his release on bail, in the event of his arrest.

3. The complaint of his wife dated 25/01/2016 would show that she married with the present applicant on 08/09/2013 after accepting the proposal, as was found on the website "Shaadi.com".

. The applicant was serving at Gurgaon in the State of Haryana and is permanent resident of Aurangabad. Before 10 days of the marriage, her father paid hand-loan of Rs.2,00,000/- to her father-in-law. On 28/08/2013, her father has also credited an amount of Rs.49,500/- in the account of her father-in-law and an amount of Rs.15,000/- was paid in cash. Her father-in-law agreed to repay the said amount, however, the same was not repaid. Ultimately, it was told that the said amount is appropriated towards the dowry and also made a demand of additional amount of Rs.5 Lakhs, as dowry. As all this took place before the solemnization of the marriage, the complainant's father was required to accept the same. Gold ornaments were gifted in the marriage.

. After the marriage, she resided with the applicant from 08/09/2013 till 15/09/2013 at

Aurangabad. During that period, however, the present applicant had forced her to have oral sex. He used to use sex toys. He was also indulging in anal fingering. Not only this, he as well as his family members started making demand of balance of the dowry amount and used to suspect her character. They used to beat her.

. In the circumstances, on 15/09/2013, she accompanied the applicant to Gurgaon. After a short period of honeymoon in Maldiv, they continued to reside at Gurgaon, however, the ill-treatment continued. Demand of dowry amount also continued. Applicant used to collect video of homosexual activities on his laptop. He was not interested in normal sexual intercourse. He also forced her to have drink and, thereafter, make unnatural sex with her. In the circumstances, the complaint came to be filed.

4. During the course of hearing of the present application, the complainant appeared and filed application (Cr. Application No. 1629 of 2016) for assisting the A.P.P.

5. Learned counsel for the applicant submits that

in-fact, after the present applicant filed divorce proceedings, false allegations are made and the complaint is filed after inordinate delay of 2 years. The complainant was in United States of America for a period of two years preceding the marriage and she had an affair with one person. She always used to compare the applicant with the said boyfriend in respect of the financial status and harass the applicant. She was insisting on settling in U.S.A. Ultimately, the applicant was required to file a divorce petition. Thereafter, the complainant filed her complaint with the Women Grievance Cell at Nagpur on 25/01/2014 and also a private complaint with the learned Judicial Magistrate First Class at Nagpur on 06/02/2014. In the said complaint, the complainant has not made allegations of any forcible unnatural sex. For a period of more than two years, there is no cohabitation between the parties and considering the fact that false and fabricated complaint is filed with inordinate delay, the application be allowed and the applicant be released on anticipatory bail.

6. On the other hand, Mr. Bayas, learned counsel assisting the A.P.P. submits that the complainant did not thought it fit to disclose the unnatural behaviour of the applicant earlier, considering the fact of talk of settlement between the parties was possible, however, due to filing of the divorce petition by the applicant, everything became clear. On 31/03/2014, she had sent a FIR to the Police Commissioner, Gurgaon (Copy of the same is filed at Exhibit "I-5" by the applicant himself), wherein the complaint about the unnatural sex and compulsion to have the drink during the sex are made besides the other complaints. In the circumstances, it was submitted that since the applicant has committed heinous crime punishable under section 377 of the Indian Penal Code against the wish of the complainant, the applicant may not be released on anticipatory bail.

7. Learned counsel for the applicant filed written notes of arguments on record, in which he submits that in-fact, the complainant has orally stated before this Court that the video recording of the commission of the crime would be filed. In-fact, what

the complainant has stated is that the applicant used to get the photographs and video-graphs of such acts.

8. Upon hearing both sides, it is clear that in the complaint dated 25/01/2014 with the Women Grievance Cell at Nagpur, the complainant has not made any grievance of having unnatural sex. However, in the complaint sent to the Police Commissioner of Gurgaon, Haryana, dated 31/03/2014, the said complaint is made. (There is a factual dispute as to whose absence entailed into closure of the said complaint by Women Grievance Cell at Nagpur.) Therefore, it can not be said that for the first time, in the present complaint with the Cantonment (Chavani) Police Station, Aurangabad, such complaints are made.

9. At this stage, neither the allegations of the applicant that the complainant was having extra marital relations nor the complaint of the complainant, that she was forced to have unnatural sex with the applicant, can be commented with confidence, as investigation is yet to be made. However, finding that the complainant from time to time has made similar

complaints, in my view, considering the nature of the offence, the custodial interrogation of the present applicant would be required.

10. In the circumstances, the following order:-

11. The Application is hereby dismissed.

[M.T. JOSHI]
JUDGE

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