

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 5050 of 2016

District : Ahmednagar

Nishantkumar Mishra,
Age : 24 years,
Occupation : Service in Army,
R/o. Ghasmandi, Bodhapur,
Gwalior, Madhya Pradesh. .. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Ahmednagar Railway
Police Station,
Taluka & District : Ahmednagar. .. Respondent.

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Mr. Suvidh S. Kulkarni, Advocate, for the applicant.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 26TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 30/2016 registered with Ahmednagar Railway Police Station, Ahmednagar, for offences punishable under Sections 376, 354, 406, 420 and 506 of the Indian Penal Code, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. The learned Counsel argued that the applicant is in service of the Army and he became acquainted with the prosecutrix as he had registered his profile for marriage with Whats Speak Web India Ltd., where the prosecutrix was working as a Tele-Caller. The learned Counsel further argued that because of frequent exchange of phone calls between the prosecutrix and the present applicant, love relations between them developed. The learned Counsel further argued that averments in the FIR are per se incorrect because the applicant is having two bank accounts, one in Axis Bank and another in Punjab National Bank. The amount deposited in these two accounts by some unknown person, as per instructions of the prosecutrix, is to the tune of Rs. 2,300/- and Rs. 5,000/-. However, averment in the FIR is to the effect that the applicant had cheated the prosecutrix by requiring her to deposit Rs. 2,70,000/- in his account. Therefore, according to the learned Counsel for the applicant, the surrounding circumstances goes to show that the FIR is false. The learned Counsel further argued that even the booking details of the hotel at Agra goes to show that the prosecutrix had supplied her identification proof for booking rooms in the hotel. The learned Counsel for the applicant argued that the FIR is belatedly lodged and there is three months delay in lodging the FIR. Therefore,

according to the learned Counsel for the applicant, whatever alleged is nothing but consensus sex and therefore custodial interrogation of the present applicant is not required.

3. The learned Addl. Public Prosecutor by taking me through the chats between the applicant and the prosecutrix pointed out that the applicant had required the prosecutrix to deposit the amount not in his account but in somebody else account. My attention is also drawn to the extract of those accounts in which the money is deposited allegedly by the prosecutrix. The learned Addl. Public Prosecutor further argued that intention of the present applicant, since inception, was to cheat the prosecutrix. The learned Addl. Public Prosecutor submitted that the CCTV footage goes to show that by taking the ATM card of the prosecutrix, the applicant had withdrawn the amount. Booking of two rooms in a hotel at Agra goes to show that the prosecutrix was not a consenting party to the incident as alleged.

4. Perused papers of investigation including the FIR lodged by the prosecutrix which dated 04.07.2016. The crime in question is registered on 05.07.2016. At the outset, it needs to mention here that the prosecutrix is resident of Silliguri, District Darjeeling of West Bengal.

5. According to the prosecution case, as reflected in the FIR lodged by the prosecutrix, after acquaintance with the present applicant, the present applicant insisted her to deposit the amount in the Bank as instructed by the applicant. She averred that accordingly she deposited an amount of Rs. 2,70,000/-. According to the prosecutrix, then she was called in Mid-October of 2015 when the applicant informed her that he had booked a house property by depositing an amount of Rs. 2,70,000/- borrowed from her. Then according to the prosecutrix, the applicant insisted her to give Rs. 8,00,000/- for purchase of the property. The prosecutrix further reported that on 9th April 2016, she was called at Ahmednagar where the applicant tried to outrage her modesty in the public lavatory of the Railway Station. Then according to the prosecutrix, she was taken to Agra by the applicant where they stayed in Hotel Harish in two rooms. The prosecutrix reported that in night hours of 10th April 2016, she was made to eat ice-cream which was added with sedative. Subsequently she became drowsy. Then the applicant committed rape on her. The prosecutrix reported that she then immediately went to the native place of the applicant and reported the incident to his parents. However, instead of helping her, family members of the applicant had assaulted her and she was asked to leave Gwalior. The prosecutrix further reported that because of depress and broken frame of mind, she

could not lodge the FIR immediately. That is how the FIR in the crime in question came to be reported on 04.07.2016 resulting in registration of the crime in question.

6. It is well settled that in sexual offences, prosecution case is to be viewed from broader probabilities. In Indian settings, refusal to act on version of the victim of a sexual assault, in absence of corroboration, as of rule is stated to be adding insult to the injury. Victim of a sexual offence is never considered as an accomplice but she is an injured witness.

7. Perusal of papers of investigation goes to show that the applicant was demanding money from the prosecutrix time and again. This fact is reflected from the print out of WhatsApp messages exchanged between them. Visit of the prosecutrix at Ahmednagar is also prima facie established from the CCTV footage. It is seen that by using the ATM card of the prosecutrix, the applicant had withdrawn some money at Ahmednagar. Stay of the prosecutrix with the applicant at Hotel Harish at Agra is also prima facie established from the papers of investigation collected by the investigator. It is seen that two different rooms booked, one for the prosecutrix and one for the applicant at that hotel. On this backdrop, it is hard to believe that the prosecutrix

was a consenting party to the alleged act of sexual intercourse. Even otherwise consent is an act of reason accompanied with deliberation, the mind weighing in balance what is good and what is bad on both sides. In the case in hand, the prosecutrix is stating that her mental faculties were not working because of consumption of ice-cream added with sedative and then there was sexual assault on her. As such it is prima facie hard to believe that the applicant is falsely implicated in the crime in question.

8. The delay in lodging the FIR cannot be considered as a ritualistic formula to doubt the case of the prosecution. In the case in hand, the prosecutrix is resident of Silliguri, District Darjeeling in West Bengal. She came all the way to Ahmednagar to meet the applicant and then the couple went to Agra. Thereafter she went to Gwalior to report the incident to parents of the applicant. There she was met with humiliating treatment. Then she returned to Ahmednagar and lodged the report with Police. The FIR itself gives explicit explanation for delay in lodging the FIR.

9. The learned Counsel for the applicant has relied on judgment of the Hon'ble Supreme Court in the case of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat & another [(2016) 1 Supreme Court Cases 152]**. In that

matter, the charge was framed in the year 2001 only for the offence punishable under Section 506 of the IPC. It was pertaining to the incident of the year 1997-1998. Thereafter allegations of rape were raised in the year 2008. The application was then moved by the prosecutrix in the year 2010 for adding the charge of rape. In this context, the Hon'ble Supreme Court restored the order of grant of anticipatory bail to the appellant therein. Such is not the case in hand.

10. Considering the nature of offence and seriousness of allegations, no case for pre-arrest bail is made out.

11. Hence, the Application is rejected.

(A.M. BADAR)
JUDGE

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