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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 683 OF 2016

Kumar Nambi Tewar ..Applicant.

Vs

The State of Maharashtra ..Respondent.

Ms Anjali Awasthi for the applicant.

Ms N.S.Jain, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 22nd September, 2016

P.C.

1) This is an application under section 439 of the Code of Criminal Procedure, 1973 by the applicant in C.R. No. 243 of 2015 dated 23/6/2015 registered with M.H.B. Colony Police Station, Borivali, Mumbai under sections 376, 354, 504, 506 (II), 406, 420 of the Indian Penal Code and section 66 (e) of the Information Technology Act.

2) The first information report is lodged by Ms Catherin John Gomes. The prosecution case, in nut-shell, is that the informant/victim and her brother Izak Gomes had advanced an amount, approximately, Rs.42,00,000/- to the applicant for conducting the business of electronic goods and real estate. It is further the prosecution case that on 20/4/2015 at about 4:30 p.m. the applicant committed an act as contemplated under section 376 of the IPC and that the applicant also took video

shooting from camera of the said alleged act. As the complainant was threatened by the applicant that he would publish the said shooting on net, the victim did not disclose the said act immediately to her mother and brother. She subsequently told the said fact to their family friend namely Mr Anup Tiwari and thereafter lodged a complaint on the email ID of Mumbai Police on 19/6/2015.

3) In pursuance of the said complaint received by Mumbai Police, the concerned Police Station registered the aforestated crime. During the course of investigation, the statement of the informant/victim and the statement of other witnesses are recorded. The applicant is arrested on 2/8/2015. After receipt of necessary reports from the concerned agencies, the police have submitted the charge-sheet.

4) Heard the learned counsel for the applicant, the learned APP and also perused the copy of the charge-sheet annexed to the present application.

5) At the out set, it is to be noted here that the alleged date of incident is 20/4/2015 and the applicant after confiding with the said act with her family friend Mr Anup Tiwari lodged a complaint with Mumbai police on 19/6/2015. The record further reveals that there is no recovery from the applicant of

the camera from which the video shooting of the said alleged act as contemplated under section 375 (b) of the IPC is committed. It further prima facie appears from the record that the medical evidence does not corroborate the version of the informant.

The learned counsel for the applicant submitted that as there was dispute between the applicant on one side and the family members of the complainant on the other side arising out of the monetary transactions, there is every possibility that the applicant might have been falsely implicated in the present crime. It prima facie appears that there is substance in the said submission.

6) During the course of investigation, the applicant is arrested on 2/8/2015 and since then he is in jail. The investigation of the present crime is completed, charge-sheet is filed and is now culminated in Sessions Case No. 273/2015. In view of the above, the applicant has made out a case for his release on bail.

Hence, the following order :-

ORDER:-

- (a) The applicant be released on bail in CR No. 243 of 2015 registered with M.H.B.

Colony Police Station, Borivali, Mumbai on his furnishing a P.R. bond of Rs.50,000/- with one or two solvent local sureties in the like amount;

(b) After his release from jail, the applicant shall attend concerned Police Station once in a month on every first Monday of the said month, between 11:00 a.m. to 1:00 p.m. till the conclusion of the trial;

(c) The applicant shall also attend all the dates before the trial Court;

(d) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;

(e) Any two consecutive defaults in complying with the aforesaid conditions shall attract the provisions for cancellation of bail;

(f) The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)