

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1227 OF 2016

Mr. Amit Omprakash Singh	...	Applicant
V/s.		
The State of Maharashtra & Anr.	...	Respondents

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Mr. G.G.Bhanushali with Suhail Shariff, Advocates for the Applicant.
Mr. Deepak Thakare, APP for the Respondent/State.
Mr. Gautam Kanchanpurkar, Advocate for R.No.2.

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CORAM : N.W.SAMBRE, J.

DATED : 20th December, 2016.

P.C.

1 Heard respective counsel.

2 The Applicant is seeking pre-arrest bail in Crime No.324 of 2016 for the offence punishable under Sections 376, 420, 506 of IPC for an alleged incidence of rape in between 2012 and 2015.

3 The prosecution case as could be gathered from the papers available on record is, present applicant is taking his post graduation study at KEM Hospital, Bombay and claimed to have bright future. The applicant herein has developed intimate relationship with the Complainant Divyangana who is also a highly educated girl. It is claimed by the prosecution that the present applicant promised the said

Divyangana of marriage and established physical relationship, photographed and videographed nude pictures and used the same so as to blackmail the complainant and to drive her to continue physical relationship with the present applicant as such crime in question.

4 The learned counsel for the Applicant while trying to make out case for pre-arrest bail would urge that plain reading of the FIR and events narrated therein reflect that applicant and the complainant were in love with each other and the same has prompted each of them to have physical relationship. He would then submit that consent of the complainant to the present applicant for establishing and continuing physical relationship was not conditional i.e. upon promise of marriage but it is out of love relationship. He would try to rely upon the contents of material available in the FIR and the other evidence so as to submit that relationship was out of consent. He would then urge that applicant, a merit student has a bright future with no criminal antecedents. It is pursuant to ad-interim protection ordered by this Court, the applicant has attended the investigation agency, co-operated and has surrendered his two mobiles. According to him, custodial interrogation of the applicant is not warranted. He would submit that applicant is very much available for the investigation so did for the prosecution if required and as such, he be released on pre-arrest bail in the event of arrest. The learned counsel would then rely upon the judgment of this Court in the matter of **Ms. Sonali Alfred Jadhav v. State of Maharashtra** reported in **2014 SCC Online Bombay 348** particularly paragraph 6 so as to substantiate his contention that in metros like Mumbai, Pune, etc., it is biological need of every person which prompts

him to have physical relationship though same is taboo in a society. He would then submit that both the applicant and the complainant being major, consent cannot be termed as conditional one. In addition, learned counsel would rely upon judgment of the Delhi High Court in the matter of **Arif Iqbal @ Imran v. State** reported in **(2009) DLT 157** so as to submit that photographs or video if any, of the complainant has to be considered to be at the behest of such complainant and not the applicant as it is the complainant who is duty bound to protect her body from person like applicant.

5 Per contra, the learned APP opposed the application on the ground that the very ingredients of Section 376 are satisfied as is apparent from the language employed in FIR and narrations therein. According to him, the applicant upon false pretext of marriage forced the complainant to have and to continue physical relationship and administer her pills for abortion/termination of pregnancy and also photographed and videographed her in nude position by giving her false promise of marriage. The said material is used by the applicant against the complainant so as to force her to continue physical relationship and it is upon insistence of the complainant for marriage, the present applicant broke away from her. He submits that report of the analysis of mobile phone of the applicant speaks voluminous about the conduct of the applicant and there is strong prima-facie case against the applicant as said photographs and videos in the mobile are used by the applicant to blackmail the complainant and forced her to have physical relationship with him.

6 Having considered rival submissions and the material available on record, what could be inferred is, admittedly there was physical relationship between the complainant and the applicant since 2012 till the date of filing of the complaint. Such relationship from instance as has been narrated in the FIR is based on the promise of marriage given by the present applicant. Not only this investigation particularly in relation to mobile phones which were seized by the investigating agency from the applicant contains nude photographs, videos of the complainant, which are used by the applicant to black-mail, so as to force her to continue physical relationship.

7 Investigation carried out till date depicts that the applicant is absconding as is apparent from the communication to that effect issued by the KEM Hospital Administration certifying that he is remaining absent from college from the date of registration of the crime.

8 Taking cumulative effect of the material as is available on record, in my opinion, there is strong prima-facie case against the applicant qua his involvement in the crime punishable under Section 376 of IPC.

9 Though the learned counsel for the applicant has invited my attention to the judgments particularly in the matter of **Sonali (Supra)** and **Arif (Supra)**, the said judgments would hardly of any assistance in the present matter as there is concrete evidence available against the applicant in the form of photographs and videos of the

complainant recorded by the applicant and use of same against the complainant forcing her to continue physical relationship which factual matrix conspicuously absent in both these judgments.

10 As a consequence of above, in my opinion, the applicant does not deserve any protection from this Court. Application as such fails and rejected.

11 The learned counsel for the applicant, at this stage, submits that the applicant's ad-interim protection ordered by this Court be continued for a period of four weeks from today as the applicant has to challenge the order of rejection of pre-arrest bail before the Apex Court which prayer is resisted by the learned APP.

12 Looking to the fact that applicant is student and he is granted ad-interim protection for about more than 5 months, it will be appropriate to continue ad-interim protection for a period of four weeks in view of the fact that Apex Court is on Christmas Vacation.

(N.W.SAMBRE, J.)