

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2131 OF 2016

Manoj Dattatray Supekar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Aisha Mohd. D. Zubair Ansari Advocate for Applicant.

Mr. Vinod Chate APP for the State.

Mr. D. Y. Borse, Police Naik, Niphad

Police Station, Nashik.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 23rd NOVEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 13/06/2016 in crime no. 101 of 2016 registered at Niphad Police Station for offence punishable under sections 376, 292 (A) & 506 of the Indian Penal Code and under section 67 (A) of the Information Technology Act, 2000. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 13/06/2016, Mrs 'X' wife of Prakash Khatale lodged a report at the police station alleging therein that

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present applicant happens to be husband of her friend. That he used to visit her house quite often. They had developed friendship. According to her, he had solicited sexual favours from her. That he had threatened her of dire consequences in the eventuality that she would deny the said sexual offers. According to her she had submitted herself to the wish of the applicant under coercion. Her husband had learnt about the intimacy between the applicant and his wife and had therefore, asked her to leave her matrimonial house. She was staying with her parents. Applicant continued to visit her at her maternal house. She has further stated that one day, he had threatened her that he would eliminate her son and under the said threat, had taken her to Shirdi on his motorcycle. They stayed at a lodge. They had sexual intercourse and after two days, he had brought her to her husband's house. After about a fortnight, her husband had asked her to stay with her parents. According to the first informant, when they were in Shirdi, applicant had taken video shooting of the sexual act between them and had forwarded the said clip to her relatives. That her husband had also received the said clip. He showed the same to his father-in-law i.e. father of the first informant and thereafter, she decided to lodge the report and had accordingly lodged the report on the basis of which

crime no. 101 of 2016 is registered against the present applicant.

3) The learned counsel for the applicant submits that the applicant was having intimate relations with the first informant for a very long time i.e. for years together, so much so that when she went to reside with her parents, he used to meet her in her parents' house. It is also demonstrated that she had voluntarily left for Shirdi in the company of the present applicant and therefore, section 376 of the Indian Penal Code would not be attracted as consensual sex is apparent on the face of the record.

4) Upon perusal of papers of investigation, more particularly the statement of the husband of the first informant, it is clear that applicant had informed Prakash Khatale that he is in relationship with the first informant. Prakash had asked for proof and at that juncture, applicant had given a memory card which was loaded with images of sexual acts between the applicant and first informant.

5) Offence under section 67 (A) of the IT Act is non-bailable offence. It is punishable on first conviction with imprisonment with either description for a term which may extend to 5 years and with fine which may extend to 10 Lakh Rupees. It is not the case of the prosecution that the applicant is a habitual

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offender. Papers of investigation would clearly indicate that there was consensual sex and that is precisely the reason why the husband of the first informant had driven her out of the house.

6) The learned counsel for the applicant submits that the first informant and her husband Prakash had filed divorce petition before Court of Civil Judge Senior Division seeking divorce by consent. The said petition is filed on 06/06/2016. The statement of the husband of the first informant is recorded on 16/06/2016 wherein he has clearly stated that on 30th May/1st June 2016, applicant had shown the video clip to him which he had shown to the parents of the first informant. It appears that since the first informant was confronted with the video clip, they have filed divorce petition by mutual consent.

7) Since the punishment for offence under section 67 (A) of the Information Technology Act, 2000 is for a term which may extend to 5 years, applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are prima facie in nature and restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 1,00,000/- (Rs. One Lakh) with one or two solvent sureties in the like amount.
- (ii) Applicant shall report to the concerned police station on first Sunday of each month till the framing of charge.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)