

BAIL APPLICATION NO.1272 OF 2017

Mr.Jagdish Choudhary, I.J.Nankani and Deepa Shetty i/by
M/s.Nankani & Associates for Applicant.
Mr.Deepak Thakare, APP, for State.
Mr.S.M.Gadkari, Police Inspector, Chembur Police Station, present.

DATE : 16th June 2017

1. This is an application for bail in connection with CR No.169 of 2016 registered with Chembur Police Station, Mumbai for offences punishable under Sections 376, 420, 406, 323, 354, 509 and 511 of Indian Penal Code. The case of prosecution is that the complainant had lodged a report with police alleging that since last five years, she was working on a ship as a security guard. The ship is under name and style as "Disney Fantasy". The accused was also working as a mess attendant on the said ship. He started making phone calls to the complainant and tried to come close. The accused tried to convince the complainant that he is in love with her. The complainant was influenced by the promises made by the accused and both of them had sexual relationship. The first information report ('FIR') also mentions that some where from 26th November

2015, the Applicant and the complainant had physical relationship continuously for a period of thirty days. It is also alleged that the accused had relationship with other women also. The FIR gives reference to various instances of physical relationship of the Applicant. The complainant has also attributed allegations of assault to the Applicant. The FIR was lodged on 21st May 2016.

2. The Applicant was arrested on 31st March 2017 and since then he is in custody. Learned advocate for the Applicant submitted that the Applicant has been falsely implicated in the case. He submitted that reading the FIR as it is, it appears that there was consensual relationship between the Applicant and the accused. He further pointed out that in the remain application dated 31st March 2017, one of the ground for seeking custody was that the incident had occurred on the ship and, therefore, report with regard to inquiry conducted by agency namely Brevard County Sheriff's Office has to be collected and the steps are being taken by investigating agency to collect the said report. It was also stated that the accused and the complainant were knowing each other and investigation is required to be done whether there are any messages, photographs, clips etc. in the mobile phone of the Applicant. However, thereafter on the next date of remand, the Applicant was remanded to judicial custody. It is submitted that the report of the agency referred to above categorically mentions that there are several instances of complaints lodged by the complainant of similar nature in the past through the ship's human resources and each time she flown home to India or moved to a different ship of her choice. It was further submitted that based on conflicting statements and lack of independent witnesses,

the agency was not able to establish the probable cause for arrest. He further submitted that the Applicant is in custody since 31st March 2017 and no purpose will be served by keeping him in further custody.

3. Learned APP submitted that the investigating machinery has already called for the report of aforesaid agency, however, same has not been received yet. It is also submitted that the Applicant had not co-operated with the investigating agency while he was in police custody.

4. I have perused the FIR, the order passed by the Sessions Court and report of Brevard County Sheriff's Office, which has been annexed to this application. It appears that the complainant admittedly had physical relationship with the Applicant-accused on several occasions. The Applicant is in custody since 31st March 2017. No purpose would be served by continuing his custody. The report of Brevard County Sheriff's Office which is also sought for by the investigating machinery, is adverse to the complainant's version. In these facts and circumstances, the Applicant can be released on bail.

5. Hence, I pass following order :

ORDER

(i) The Applicant is directed to be released on bail in connection with CR No.169 of 2016 registered with Chembur Police Station,

Mumbai on furnishing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;

(ii) The Applicant is directed to report the investigating officer of Chembur Police Station once in a fortnight on every Saturday between 11.00 a.m. and 1.00 p.m. till filing of charge sheet;

(iii) The application is disposed of.

(PRAKASH D. NAIK, J.)

MST