

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1525 OF 2017**

Arunkumar Dinanath Pandey	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Prashant G. Pandey for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

API Mr. Bapu Baban Gaikwad, from Parksite Police Station, is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 7th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 602 of 2016 registered with the Parksite Police Station, Mumbai, for the alleged offences punishable under Sections 376, 376(2)(n), 354(C), 506(2), 328 of the Indian Penal Code; under Section 67(A) of the Information Technology Act; and under Sections 4, 6, 8, 10, 12 and 14 of the Prevention of Children from Sexual Offences Act.

3. Learned Counsel for the applicant submitted that the applicant has been falsely implicated in the said case. He submitted that the allegations as against the applicant are false and that the applicant has been falsely implicated, as the prosecutrix wanted to stay in the premises, which was purchased by the applicant from the prosecutrix's mother. Learned Counsel for the applicant has relied on certain documents i.e. the Sale Agreement entered into between him and his family members, including the prosecutrix, as well as the Agreement entered into between him and his mother-in-law (prosecutrix's mother), by which, the applicant allegedly purchased his mother-in-law's house. He submitted that even the recovery of a memory card under a panchanama, is doubtful, as there was no reason for the applicant to keep the memory card separately. He further submitted that the applicant had lodged an NC complaint, on 2nd November, 2016, that his mobile had got lost and that the present FIR was lodged immediately on the next date i.e. on 3rd November, 2016. He submitted that the prosecutrix had stolen the applicant's mobile and that even the memory card was manipulated by the prosecutrix, to take over the house purchased by the applicant. He further submitted that it was the applicant who was

supporting the prosecutrix and was paying her college fees, etc, and as such the allegations of sexual assault are false.

4. Learned A.P.P opposed the application.

5. Perused the papers. The applicant is the brother-in-law of the prosecutrix/complainant. According to the prosecutrix, between the period May, 2014 to September, 2016, the applicant showed her an explicit video of himself and her sister having physical relations and threatened her to make the said video viral on the social media, if she did not have physical relations with him, pursuant to which, the applicant sexually exploited her, against her wish. She has alleged that under threat and coercion, that the applicant would show her sister's video on social media, the applicant committed forcible sexual intercourse with her, during the said period. The prosecutrix was admittedly a minor at the relevant time. She has alleged that the applicant had also video recorded the physical relations between her and the applicant and had threatened to put the said video on social media, if she refused to keep physical relations with him. In November, 2016, the prosecutrix shared the aforesaid facts with her sister, pursuant to which, the FIR was lodged.

6. Learned Counsel for the applicant has relied on certain documents i.e. the Sale Agreement entered into between him and his family members, including the prosecutrix, as well as the Purchase Agreement entered into between him and his mother-in-law (prosecutrix's mother). Admittedly, the said documents are not the part of the charge-sheet, but are defence documents.

7. A perusal of the statement of one of the witnesses i.e. Rajesh Pandey shows that the applicant had shown video recordings of the physical relations between the applicant and the prosecutrix as well as between the applicant and the prosecutrix's sister, to him. The said witness has stated that when he asked the applicant to delete the said videos, the applicant refused. He has further stated that the applicant told him that, the prosecutrix and her sister were living alone, and that they would have no courage to lodge a complaint against him, as he had the video clippings of them. The applicant is also alleged to have disclosed to the said witness, that he had told the prosecutrix that if she complained to the police, he would upload the said videos on the social media. The statements of two

other witnesses i.e. Deepak Pandey and Raj Singh also show that the applicant had shown video recordings of him, having physical relations with other women. The recovery of the memory card from the house of the applicant shows that there were three videos in the said card and that all the three videos were objectionable i.e. one of the prosecutrix, one of the prosecutrix's sister and the applicant and one of the prosecutrix's mother bathing. The possibility of the applicant tampering with the witnesses also cannot be ruled out.

8. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. In the facts, even the possibility of the applicant intimidating and tampering with the witnesses also cannot be ruled out. The application is accordingly rejected. However, the trial is expedited.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.