

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1400 OF 2017

Ashraf Sultan Selia alias Aman Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.C.K.Pendse, Advocate, for the Applicant

Ms A. Malhotra, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.08.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C.R.No.I-210 of 2017 registered with the Manikpur Police Station, District – Palghar, for the alleged offences punishable under Sections 328, 376, 354-D & 509 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submitted that as the prosecutrix/complainant's husband had come to know about their relationship, the aforesaid complaint has been lodged. He submitted that

the relations, if any, between the Applicant and the prosecutrix/complainant were consensual. He submitted that the prosecutrix/complainant a married woman aged 28 years with a son, who had on her own accord, was in a relationship with the Applicant. He further submitted that in the facts, custody of the Applicant is not required.

4. Learned APP vehemently opposes the Application. She submitted that the Applicant has posted his photograph on the facebook in the name i. e. Aman in one place and Ashraf in another. He submitted that a perusal of the Applicant's face book account shows, that the Applicant is a play boy. She submitted that the Applicant was black mailing the prosecutrix/complainant, that he has nude photographs of hers and videos stored in his mobile, which he would either put up on the facebook or flash across the social media, pursuant to which, the prosecutrix/complainant on one occasion, even attempted to commit suicide by consuming 'Lizol'. She submitted that the custody of the Applicant is necessary to retrieve the prosecutrix's photos etc.

5. Perused the papers. The prosecutrix/complainant is aged 28 years and is a married woman with three children i. e. two daughters

and one son. She has stated that her husband was in Baroda, at the relevant time, when the Applicant established contact with her in June, 2015, by sending her a message from his mobile phone. She has stated that initially, she did not entertain the Applicant's friendly advances, but later, accepted his request for friendship. She has alleged that in July, 2015, the Applicant asked her to come and meet him, pursuant to which she went to meet the Applicant alongwith her son. Nothing happened in the said meeting. She has alleged that the Applicant continued to send messages and once even asked her to come out for a movie and lunch, which she refused.

6. In August, 2015, due to the Applicant's insistence and pressure, the prosecutrix/complainant went to meet him at Mira Road, for the 1st time. Pursuant thereto, the Applicant and the prosecutrix/complainant went to McDonald, where the Applicant ordered a takeaway and also ordered a bottle of drinking water. According to the prosecutrix, after they sat in a car, the Applicant told her, that they should go to a hotel, as someone may see them, however, she refused. She has alleged that the Applicant told her, that he does not eat in the car and forced her to have the food, however, she refused. She has alleged that the Applicant offered her water and told her to atleast

drink the water, which she had, as she was nervous. According to the prosecutrix, she asked the Applicant to drop her home, however, he did not go in that direction; that after some time she started feeling dizzy, due to intoxication; that she could hear the Applicant but could not comprehend anything; that the Applicant undressed her and himself; and that she faintly remembers that the Applicant was sexually assaulting her.

7. According to the prosecutrix/complainant, the Applicant again called and asked her for sexual favour, which she refused. According to the prosecutrix/complainant, when she refused, the Applicant threatened her and blackmailed her, that he had her nude photographs and videos stored in his mobile which he would either publish on the facebook or put up on the social media and also disclose to her husband. The prosecutrix/complainant has alleged that as she was afraid, because of the threats of blackmailing in December, 2015, she had sexual intercourse with him at Hotel Vrindavan, Vasai Road. She has alleged that due to persistent blackmailing, she was compelled to have physical relations with the Applicant in February, 2016, March, 2016 & April, 2016. According to the prosecutrix/complainant, she was under tremendous mental stress, as the Applicant was blackmailing her. She has stated that on 05.12.2016, when her husband was again posted

at Mumbai and had gone for work, the Applicant came to her residence and started behaving objectionably with her. When the prosecutrix/complainant resisted his advances, the Applicant is alleged to have assaulted her. On account of the said incident, the prosecutrix/complainant was severely traumatized and attempted suicide by consuming 'Lizol' and also slit her wrist. She has stated that she informed her husband about the consumption of the liquid, pursuant to which, she was admitted to Siddharth hospital. On 07.12.2016, the prosecutrix/complainant disclosed everything that had transpired between her and the Applicant to her husband, pursuant to which, her husband lodged a complaint, which was registered as an N.C.Complaint, being N.C.No.3319 of 2016 alleging the offences punishable under Sections 323, 504 & 506 of the Indian Penal Code with the Valiv Police Station, Vasai Road. The husband of the prosecutrix/complainant had also sent a written complaint dated 17.04.2017 to the National Women Commission which ultimately led to the lodging of the aforesaid FIR, as against the Applicant. She has stated that when her husband made enquiries about the Applicant, they learnt that the Applicant had several aliases i. e. Aman Sultan Shaikh alias Ashraf Sultan Shaikh alias Aman James alias Ashraf Saliya alias Lucky Jeans. The prosecutrix has given the six mobile phones numbers, from

which the Applicant would call her. It appears from the FIR, that the Applicant was compelling the Complainant to have physical relations, with him by threatening her, that he had her nude photographs and videos stored in his mobile, which he would put up on the social media. The SMSs sent by the prosecutrix/complainant to the Applicant, annexed to the Application, also shows the Complainant's anger and that she was exploited. In the messages sent to the Applicant, the Complainant has also called the Applicant a play boy. The facebook account of the Applicant shows the Applicant's name at one place is Aman and Ashraf at another place. The face book posts read as *“hi i am Amaan from mumbai i am looking more sex any time call me Any Time*” It also appears that the Applicant had submitted his Aadhar Card and Pan Card in different names, before the trial Court. It appears that during investigation, the said Aadhar Card was found to be invalid. Exh. “E” of the Application also shows that the prosecutrix had gone to the Applicant's office because of the Applicant's behaviour. The complaint dated 08.02.2017 sent by the Applicant to the Senior Police Inspector, Khar Police Station, Khar(W), Mumbai appears to have been sent as a counter blast to the complaint lodged by the prosecutrix/complainant's husband dated 07.12.2016. The Applicant has gone to the extent of alleging molestation and assault by the

prosecutrix/complainant.

8. Be that as it may, in the facts of the case, custodial interrogation of the Applicant is necessary. It is also necessary to find out whether any more women have been similarly induced and sexually assaulted and exploited by the Applicant. Accordingly, the Application stands rejected.

9. It is made clear that the observations made herein are prima facie for deciding the aforesaid Application and if an Application for regular bail is filed, the same shall be considered on its own merits, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)