

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2415 OF 2016

Mr. Vinay Kumar Prakash Rao Mane)...Applicant

V/s.
State of Maharashtra)...Respondent

Mr. Tejesh Dande i/by Tejesh Dande & Associates, Advocate for the Applicant.

Smt. M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th JANUARY 2017.

P.C. :

This is an application by accused/applicant in Crime No.500 of 2015 registered with Yerwada Police Station for the offences punishable under Sections 376, 420, 406, 506 and 380 read with Section 34 of the IPC for his release on bail.

2 Heard learned counsel appearing for the
accused/applicant. He argued that the first bail application of the
accused/applicant was withdrawn on 14.7.2016 with the hope
that trial would commence immediately. However, despite lapse of
16 months, the trial has not commenced. The learned advocate

further argued that in the application moved to the Axis Bank by the first informant Anjali, she has shown Preeti Kashid as her friend and the applicant as her relative. This according to the learned advocate shows that the FIR is per-se false. The learned advocate further argued that intention of the applicant-accused can be seen from the fact that he has introduced the first informant to his mother as well as sister and the first informant has also visited his native place at Bangalore. The learned advocate further argued that evidence collected by the investigator in respect of pledging Mangalsutra at the Muthoot Finance is also discrepant as it is reported that the applicant has stolen mangalsutra weighing 10 gms while seized mangalsutra is having some different weight. The learned advocate further argued that statement of Preeti does not show that she has made allegations about commission of rape on her. It is argued that considering the present era, it cannot be said that the applicant-accused has committed rape and what is apparent is consensual sex even if it is held that the case of prosecution is correct. Therefore, in submission of the learned advocate for the applicant-

accused considering the material on record and particularly, the application moved to Axis Bank showing the fact that applicant is relative of the first informant, the applicant is entitled for bail.

3 The learned APP opposed the application.

4 I have carefully perused the charge-sheet placed on record and also considered rival submissions. At the outset, Section 90 of the IPC needs re-production. It reads thus:

“90. Consent known to be given under fear or Misconception._ A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person-if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child- unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

Perusal of this provision goes to show that consent obtained under misconception cannot be termed as valid. Explanation to Section 375 of IPC makes it clear that consent means an unequivocal

voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. It is also made clear that not offering physical resistance to the act of penetration shall not by the reason be regarded as consenting to the sexual activity. Similarly, at the outset, it is apposite to quote observations of the Hon'ble Apex Court in the matter of **State of UP v. Naushad AIR 2014 SC 384** where the Apex Court has explained the concept 'Consent'. Those observations read thus:-

“Thus, the alleged consent said to have obtained by the accused was not voluntary consent and this court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. He made a false promise to her and he never aimed to marry her. In case of Yedla Srinivas Rao vs. State of A.P., with reference to similar facts, this Court in para.10 held as under :-

“10. It appears that eh intention of the accused

as per the testimony of PW-1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of Pws, 1,2 and 3 and before Panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent.”.

The Apex Court has clarified that if consent is obtained on false promise to a woman with an intention to indulge in sexual intercourse with her then that cannot be termed as a valid

consent. With this legal position, prima-facie, let us appreciate contention of the learned advocate appearing for the applicant-accused that this is not a case for rape but that of a consensual sex between the two adult persons.

5 On 27.10.2015, the FIR came to be lodged by the prosecutrix. She is married lady awaiting divorce from her husband. She works as Logistic Manager with ZF India Private Limited. Desirous of settling in life, she registered her name in a matrimonial site named as 'Bharat Matrimony'. She received a male from a lady named Vidya who is co-accused and sister of the present applicant-accused, proposing the present applicant as prospective bridegroom. With this, the applicant-accused as seen from the FIR developed intimacy with the first informant and represented not only to her but her entire family that he will ultimately marry the first informant. Averments in the FIR show that when the first informant with her 2 and half years old son had been to Bangalore at the native place of the applicant-accused, the applicant-accused took her for lunch in hotel and made her to pay for it through her credit card. At that time,

applicant-accused became aware about the password/number of the credit card. The first informant alleged that applicant-accused took her credit card in his possession. The first informant claims that on insistence of the applicant-accused, she paid the applicant-accused an amount of Rs.60,400/- on 3.11.2015. The applicant-accused represented her that he has distributorship of Vodafone and he intends to start that business even at Pune. He insisted the first informant to become partner by investing capital by availing loan. The first informant claims that on 17.9.2015, she was taken for 'Darshan' of deity and then to Lonawala where the applicant-accused had raped her in the hotel. The first informant also claims that on 19.10.2015 taking advantage of the fact that elders in the family of first informant are not available at the house, the applicant-accused committed rape on the first informant. It is alleged that the applicant-accused had stolen gold mangalsutra weighing 10 grams so also coin of silver from the house of the first informant. The first informant claims that in this way she has been cheated of money by extraction of money and suffered monetary loss to the tune of Rs.1,00,400/- apart from physical

exploitation. The first informant also reported that in similar fashion, the applicant-accused cheated other two ladies.

6 During the investigation, investigator has recorded statement of one more lady. She is a divorcee with one daughter. That lady has stated to the police that by adopting same modus operandi, the applicant-accused has cheated her and raped her. Though learned advocate for the applicant-accused sought to dispute this fact, the statement of another woman recorded during the investigation goes to show that on pretext of the marriage, the applicant-accused started co-habiting with her at her flat at Viman Nagar, Pune and had indulged in sexual relations with her by promising to marry her. Statement of this another lady shows that all this was happening when the applicant-accused was keeping relations with the first informant. Another woman has categorically stated to the Investigator that by creating trust, the applicant-accused extracted an amount of Rs.1 Lakh from her. The another woman has further reported to the police that on 24.10.2015 when the applicant-accused was sleeping in her house, she checked his mobile and found messages of the first

informant and came to conclusion that by making false promise of marriage, the applicant-accused has cheated her. Cumulative effect of statements of two women i.e. the first informant and another lady goes to show that the applicant-accused has adopted modus-operandi of targetting divorced or awaiting divorce women from the matrimonial site and then to allure them with the false promise of marriage for initiating and continuing sexual relations with them apart from their financial exploitation.

7 Prima-facie, the charge-sheet reveals the material to show that the stolen mangalsutra of the first informant was recovered from the Muthoot Finance Company and statements of another women makes it clear that it was pledged at the instance of the present applicant with the said company.

8 The offence alleged, apart from being serious is heinous. It is affecting society at large. Hence, no case for bail is made out. The application is, therefore, rejected. The trial Court

may consider expediting the trial by keeping in mind pendency of the undertrial matters before it.

(A. M. BADAR, J.)