

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2446 OF 2016

Sujit Madhukar Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Nitin Dalvi i/b Mr. Suresh Dubey Advocate for Applicant.
Ms. P. P. Shinde APP for the State.
Mr. Arjun Ramchandra Shelke, PSI
Ganeshpuri Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 15th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 03/08/2016 in crime no. 74 of 2016 registered at Thane Rural Police Station. Investigation is completed and charge-sheet is filed on 25/10/2016 for offence punishable under sections 376 (2) (n) 354 (d), 341, 323, 504 & 506 of the Indian Penal Code and section 4, 12 of Protection of Children from Sexual Offences Act, 2012 and section 67 (A) of Information Technology Act.

2) It is the case of the prosecution that on 03/08/2016, Ms. 'X' lodged a report at the police station alleging therein that when she was studying in 10th standard in 2012, present applicant used to stalk her. He used to follow her to the school. He had even expressed his love for her, however, she had declined to reciprocate to the same. Thereafter, her father was receiving missed calls from cellphone no. 9975207839. Being harassed by the said missed calls, her father had abused the caller on the cellphone. Applicant had disclosed his name as Sujit. That a week thereafter, applicant had been to the house of Ms. 'X' and had abused her father on account of the abuses he had extended earlier.

3) In 2013, applicant was not only stalking her but was harassing her and was making advances towards her. He used to threaten her that he would give false information about her character to her father. In December 2013, applicant had accosted her at Saitan Pool bus stop. He was insisting upon her to give reason for refusing the proposal. Being fed up with the harassment, she had agreed to meet him at the same bus stop. He had forcibly taken her to

a room just behind the bus stop. She had categorically stated to him that she does not love him. He had assaulted her in the said room and had sexual intercourse with her against her wish. She returned home, however, she was conscious of the fact that her father is suffering from hypertension and therefore, she had not disclosed about the same to her father.

4) In June 2014, she was attending tuition classes at Virar. Applicant used to follow her and insist upon her to meet him again. Thereafter, he had started blackmailing her on the ground that he would inform her father about the incident in the room just behind the bus stop. The victim had to succumb to his requests. He had taken the cellphone number of her friend Sagar Shinde. He used to harass her on her cellphone. Sagar Shinde had informed the victim that the applicant was tarnishing her image.

5) On 22/07/2016, Sagar Shinde had called upon the paternal cousin of the victim and had informed him that the present applicant had sent him obscene photographs of the victim. That Ashish Bhosale had forwarded those messages to Ms. 'X'. she saw the photographs and identified herself and also

identified that those photographs were taken by the applicant when he had taken her to a lodge. On the basis of the said report, crime no. 74 of 2016 is registered at Thane Rural Police Station.

6) Perused papers of investigation.

7) The date of birth of the victim is 28/09/1997. The year when she was being stalked by the present applicant is 2012-2013 to 2015. That he had forcible sexual intercourse with the victim in the year 2013 when she was less than 18 years old at the time of incident and therefore the provisions of Protection of Children from Sexual Offences Act, 2012 are attracted.

8) The learned counsel for the applicant submits that the complainant had voluntarily accompanied the applicant to several hotels.

9) Upon perusal of papers of investigation, it is clear that applicant had taken the victim to the hotel under threat and coercion. After he had first forcible sexual intercourse with her in the year 2013.

10) Perused photographs. It is clear that applicant had taken nude photographs of the victim when she was sleeping in the hotel and without her knowledge. The said photographs were posted and transmitted and forwarded on 'Whats App' exposing the victim to social obloquy. Photographs were put up on social media and circulated amongst friends and relatives.

11) Perused the statement of Sagar Shinde. He has also stated that he had received the photographs from the present applicant.

12) Perused the messages appended to the obscene photographs and it is clear that applicant was the author of the said messages.

13) The learned counsel for the applicant vehemently submits that an offence under Information Technology Act is a bailable offence. It is submitted that there was love affair between the applicant and victim and that she had voluntarily accompanied the applicant to the hotels as is disclosed from the statement of Prashant Mhatre who runs hotel Raghuveer Picnic Park.

It is stated by the witness that the victim had accompanied the applicant on 5-6 occasions in the year 2014. The learned counsel submits that it is in these circumstances that the applicant deserves to be enlarged on bail. A serious doubt is also raised by the learned counsel for the applicant as to whether applicant was the author of the said messages appended to the photographs and the possibility of tampering with the photos and messages cannot be ruled out. According to this Court, it would be a far fetched submission to be considered.

14) It is true that an offence under Information Technology Act is a bailable offence but in a case like present one, it cannot be digested that the applicant who was allegedly in love with the victim, had taken her to the hotels, under the pretext of love and had taken her nude photographs and circulated the same on social media. It is not only breach of trust as far as the victim is concerned but such offences have larger ramifications and it shocks the conscience of the Court. The messages that are authored by the applicant are not only obscene but are lewd messages, tarnishing the very dignity and honour of the victim and her entire family. In 2014, victim was less than 18

years old and therefore, her consent cannot be taken into consideration. In the facts of this case, this Court is of the opinion that the act committed by the applicant is also covered under section 503 of the Indian Penal Code which reads thus:

*“**Criminal intimidation** – Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation”.*

15) In fact, applicant ought to have been charge-sheeted for offence punishable under section 503 of the Indian Penal Code and not 504 of the Indian Penal Code as there is no question of provoking breach of public peace. This is a case where the applicant has caused injury to the reputation of the victim. At the threshold the applicant had threatened the victim to surrender to his sexual desire and therefore, applicant does not deserve to be enlarged on bail.

- 16) Application, being sans merits, stands rejected.
- 17) The learned APP upon instructions submits that investigating agency is in the course of securing the certificate as contemplated under section 65 of the Indian Evidence Act and the same will be produced in the court in the course of trial or at the stage of framing of charge.
- 18) Photographs which are seized in the course of investigation shall be produced under section 294 of the Code of Criminal Procedure, 1973 in a sealed envelop.

(SMT. SADHANA S. JADHAV, J.)