

Anand

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

BAIL APPLICATION NO. 887 OF 2018

Bhavin Manilal Dedhia .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Sunny Waskar i/b. Mr. V. O. Dubey, Advocate, for the Applicant
Mrs. Rutuja Ambekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 03.05.2018

P.C.

. At the outset, learned counsel for the Applicant seeks leave to amend to delete the name of the prosecutrix wherever it appears. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the parties.

3. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 707 of 2017 registered with the Malwani Police Station, for the alleged offences punishable under Sections 376, 506 r/w 34 of the Indian Penal Code.

4. Learned counsel for the Applicant submitted that the Complainant, aged 38 years was in a relationship with the Applicant, aged 35 years. He submitted that the Complainant, a divorcee, was working in a beauty parlour and met the Applicant on facebook, ten months prior to the incident. He submitted that it is a case of a consensual relationship, gone sour. He submitted that the Complainant had falsely implicated the Applicant and had in fact, threatened to lodge a complaint as against the Applicant on the previous day and that with regard to the same, an NC was also lodged by the Applicant's father, as against the Complainant herein.

5. Learned APP on the instructions of the investigating officer when questioned states that the CCTV footage in the area was examined with regard to the allegation that the Applicant and two other unknown persons entered the room and sexually assaulted her and have come to the conclusion, that apart from the Applicant, nobody else had entered the Complainant's room. She also does not dispute of the lodging of an NC complaint by the Applicant's father on 17.11.2017.

6. Perused the papers, in particular, the statement of the Complainant. The Complainant / Prosecutrix, aged 38 years is a

divorcee residing with two small children. She has stated that she met the Applicant on facebook ten months prior to the incident; that she and the Applicant started chatting on face book; that the Applicant was searching for a room premises and requested the Complainant to look for a room; and that she and the Complainant started meeting each other and visiting the Malwani area. According to the Complainant, that she had physical relations with the Applicant on a few occasions and that the said relations were with consent. The Complainant has, however, alleged that on 14.11.2017, the Applicant came alongwith two friends to the Complainant's room and that two unknown persons pushed her on the floor, removed her trouser after which the Applicant had physical relations with her and other co-accused took a video of the said act. According to the learned APP, investigation does not reveal that there were two unknown persons.

7. It also appears that one day prior to the lodging of the FIR by the Complainant i. e. (18.11.2017), the Applicant's father had lodged an NC with the Dahisar Police Station as against the Complainant herein on 17.11.2017 alleging an offence punishable under Section 506 of the Indian Penal Code. In the said NC lodged by the Applicant's father, he has stated that the Complainant herein, had come

to their house and was demanding money for household expenses from the Applicant and had threatened him, his wife and the Applicant, with dire consequences, if the said money was not given. The Applicant is in custody since November, 2017. Investigation is complete and charge-sheet is filed.

8. Considering the peculiar facts & circumstances of the case, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicant be released on **cash bail** in the sum of Rs. 15,000/-, for a period of four weeks;
- (ii) The Applicant shall within the said period of four weeks, furnish P. R. Bond in the sum of Rs. 15,000/- with one or two local sureties in the like amount;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the

Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Applicant to cooperate in the conduct of the trial.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. It is made clear, that the observations made herein are prima facie and are confined to this Application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)