

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 769 OF 2018**

Ajit Rameshlal GandhiApplicant.
Vs.
The State of Maharashtra & Anr.Respondents.

WITH

CRIMINAL APPLICATION NO. 523 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 769 OF 2018

Smt. Kavita Manish DaraApplicant

IN THE MATTER BETWEEN-

Ajit Rameshlal GandhiApplicant.
Vs.
The State of Maharashtra & Anr.Respondents.

Mr. Shirish Gupte, Senior Advocate i/by Harshawardhan for the Applicant.

Mr. Ameet Palkar APP, for the Respondent-State.

Mr. S.M. Gorwadkar, Senior Advocate i/by Smt. Sana Baugwala for the Intervenor.

Ms. Annapurna Khare, API, Ulhasnagar Police Station.

CORAM : A. S. GADKARI, J.

DATE : 8th JUNE, 2018.

P.C.:-

The Applicant is apprehending arrest in CR No. 39 of 2018 dated 20th February, 2018 registered with Ulhasnagar Police Station,

District Thane, under Section 376 and 506 of the Indian Penal Code.

2 Heard Shri Gupte, the learned Senior Counsel for the Applicant and Mr. Gorwadkar, the learned Senior Counsel for the First Informant at greater length and the learned APP. Perused the record of investigation.

3 By an order dated 18th April, 2018, this Court had permitted the Applicant to delete the name of the prosecutrix from the Application and instead of her name, she has been termed as “X” with a view to protect her identity.

4 The First Information Report dated 20th February, 2018 is lodged by the prosecutrix aged about 36 years.

The prosecution case in brief is that, the Applicant is the landlord of the premises where the first informant is a licensee and was conducting her business namely 'Kavya Spa and Saloon'. That, the Applicant and his other family members used to visit the said saloon for availing various facilities.

The Applicant was aware of the fact that the prosecutrix is heavily indebted and was under the burden of re-payment of loan installments and therefore, he advanced an indecent proposal to her

for keeping physical relations with him. It is stated in the First Information Report that, the Applicant subsequently extended threats to the first informant that if she fails to surrender to his demands, he will see to it that her business will be ruined and the said business establishment would be locked permanently. By extending the said threats, it is alleged that the Applicant forced the first informant to submit herself to have a physical relations with him. It is stated that from April 2016 to May, 2017, on several occasions there had been physical relations between the first informant and the Applicant at the mezzanine floor of the business establishment of the prosecutrix.

Subsequently, the prosecutrix got pregnant and refused to have physical relations with the Applicant and therefore, he started causing mental and physical harassment to her. As the first informant had suffered heavy losses and was in financial difficulties, in the month of June, 2017 she informed the Applicant that she intends to conduct the said business in partnership with one Shri Nand Wadhawa, to which the Applicant, being a landlord of the premises, refused. It is lastly stated that, the Applicant by taking undue advantage of the fact situation that, the first informant is heavily indebted, put physiological and emotional pressure on her and from

April, 2016 to May, 2017 committed rape on her on the mezzanine floor of her business establishment namely 'Kavya Spa and Saloon'.

5 Mr. Gorwadkar, the learned Senior Counsel appearing for the first informant submitted that, as the first information report of the prosecutrix was not recorded as per her narration, at her request the learned Judicial Magistrate, First Class, 2nd Court, Ulhasnagar has recorded her statement under Section 164 of the Code of Criminal Procedure and in her statement before the concerned Magistrate, the first informant has in detailed narrated all the facts leading to file the present crime. He further submitted that, the Applicant being the landlord of the said business premises, by taking undue advantage of the fact that the first informant was in need of money and was indebted, forced her to have physical relations with him for more than a year. He further submitted that, the Applicant was a hapless and helpless lady and therefore, she had to submit herself to the demands of the Applicant. He further submitted that, though the Trial Court in its impugned order dated 10th April, 2018, in paragraph No. 6 has observed that *"It seems that Complainant herself surrendered the accused. Apparently there seems consent to the intercourse between complainant and the accused"*, the alleged consent was under duress

and coercion and therefore, it cannot be termed, in the eyes of law, as a free and valid consent. In support of his contention, he relied on the decision of the Supreme Court in the case of *Deelip Singh Alias Dilip Kumar Vs. State of Bihar reported in (2005) 1 S.C.C. 88*. He therefore, submitted that, the Applicant may not be shown any leniency and the present Application may be dismissed *in limine*.

6 A minute perusal of the record would indicate that, it is also the allegation of the first informant that, on 6th February 2018 she was forcibly dispossessed from the suit premises by the Applicant and therefore, on 8th February 2018, she lodged a compliant with the Ulhasnagar Police Station, which was recorded as a non-cognizable offence bearing No. 276 of 2018, under Section 500 and 323 of the Indian Penal Code by the concerned Police Station.

It is to be noted here that, when the first informant had been to the police station on 8th February 2018, she did not mention about the alleged sexual assault on her to the police and had made a grievance only of forcible dispossession and taking possession of her business premises by the Applicant by use of a duplicate key.

7 The record further indicates that after the first informant informed the fact of her intention of entering into a partnership with

Shri Nand Wadhawa for running the said business of 'Kavya Spa and Saloon' and after lodgment of the said N.C. No. 276 of 2018, it *prima facie* appears that the Applicant by sensing danger of false implication in a criminal case, immediately made representations to the Commissioner of Police, Thane and other Police Authorities on 10th February, 2018. The record further indicates that, the Applicant also made a representation dated 14th February 2018, to the Commissioner of Police, Thane with similar apprehension.

8 In this background, the first information report, which is lodged on 20th February 2018, has to be viewed and appreciated. I have personally perused the statement of the first informant recorded under Section 164(1) of the Code of Criminal Procedure by the learned Judicial Magistrate, First Class, 2nd Court, Ulhasnagar. In her said statement, the prosecutrix has stated that on 7th February 2018, she had been to the police station when the concerned Police Officer asked her to sign in a register however, did not give copy of the complaint to her, as the concerned officer did not find any substance in her complaint and therefore, on 12th February 2018, she made a grievance to the Deputy Commissioner of Police of the concerned zone. That, on 20th February 2018, the police recorded her first

information report and took her signature. It is to be noted here that, in the said statement the first informant had stated that the Applicant was having physical relations with her since 27th April, 2016 to 20th May, 2017 on the mezzanine floor of her business establishment. It is also stated that, her staff who was employed in the said establishment used to work on the ground floor and if she would have raised hue and cry, the staff would have come up and her relations would have been revealed and therefore she did not make any grievance about it.

9 After perusing the entire record, *prima facie*, I find substance in the findings recorded by the learned Additional Sessions Judge, Kalyan in its impugned Order dated 10th April, 2018 that the physical relations between the Applicant and the first informant was a consensual act between two adult persons. It further *prima facie* appears from the record that, after the first informant failed to pay the rent to the Applicant and after the Applicant took possession of the suit property on 6th February, 2018, the prosecutrix has lodged the present first information report.

10 After taking into consideration the entire material available on record, this Court is of the view that the Applicant is entitled to be protected by pre-arrest bail.

Hence, the following order.

- a) In the event of arrest in CR No. 39 of 2018 dated 20th February, 2018 registered with Ulhasnagar Police Station, District Thane, the Applicant shall be released on bail on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- b) The Applicant shall attend the Investigating Officer as and when called for between 11.00 a.m. to 1.00 p.m. and to join the process of investigation till submission of final report.

It is needless to mention that before calling the Applicant to the Police Station, the concerned Investigating Officer shall issue a notice under Section 160 of the Code of Criminal Procedure.

- c) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

11 Application is accordingly allowed in aforesaid terms.

12 In view of the disposal of the Anticipatory Bail Application

No. 769 of 2018, the Intervention Application No. 523 of 2018 does not survive and the same is accordingly disposed of.

(A.S. GADKARI, J.)