

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

CRIMINAL BAIL APPLICATION NO.1245 OF 2018

Ketan Kamalakar Tirodkar	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Ms.Aparna D Vhatkar, Advocate for the Applicant.
Mrs. P.D. Shinde, APP for the Respondent - State.
PI Ravi Sardesai, Cyber Police Station BKC, Bandra, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 11, 2018.

P.C. :

This is an application for bail in connection with C.R.No.25 of 2017, registered with Cyber Police Station, BKC, Mumbai. FIR was lodged on 21st July, 2017, and, the offences were registered under Sections 509, 506, 500 of Indian Penal Code ("IPC", for short) and Section 67 of the Information Technology Act ("IT Act", for short).

2 The prosecution case is that the complainant is using Facebook social net working site through his profile account. He had noticed on the Facebook and social networking site Facebook

Profile in the name of Ketan Tirodkar, wherein several objectionable posts were made against the judges of this Court. It was also alleged that some of the posts were derogatory to the judges and advocates. It was alleged that the person who had posted the said messages had misused the medium of Internet and posted defamatory and highly objectionable posts. FIR was lodged for aforesaid offences. The applicant was arrested on 7th December, 2017. During the course of investigation, statements of witnesses were recorded, the objectionable postings form part of charge - sheet. The charge - sheet was filed for offences under Sections 354(A), 500, 505(2), 506(2), 509 of IPC and Section 67 of IT Act.

3 Learned counsel for the applicant submitted that the applicant has highest regard to the judiciary and the Court. Applicant is citizen of India and pursuing public interest causes via RTI Act and public interest petitions. Applicant has preferred several such petitions for the cause of society. It is submitted that the Facebook account of the applicant is being misused. The foundation of the offence, as per the prosecution case is the articles were posted on the Facebook under the same name as that of the applicant. It is submitted that the applicant is in

custody for a period of about 10 months and further detention is not necessary. The maximum punishment provided by law for the offences with which the applicant has been charged cannot exceed more than three years. It is further submitted that most of the offences for which the applicant has been charged are not attracted in the present case. Applicant would be facing prosecution as the trial is pending, but, he cannot be subjected to prolong custody considering the punishment provided under the law for the aforesaid offences. It is also submitted that the Sessions Court, while rejecting the application for bail has observed that the offences punishable under Sections 509, 354-A would hardly come into play. It is submitted that the efforts of the applicant in pursuing the PIL was appreciated by different Benches of this Court. Learned counsel placed reliance upon the order passed by this Court in PIL Stamp No.61 of 2014, to support her submission that the Court has appreciated the applicant for raising important issue before the Court. It is further submitted that the charge - sheet filed against him also refers to the order passed by the Division Bench of this Court being PIL Stamp No.47 of 2017 and other matters, wherein he was permitted to visit his residence with police escort to study the PIL, and, effectively assist the Court. Applicant has filed an

undertaking/affidavit affirmed in the Registry of this Court stating that he had utmost respect for this Court and he did not and would not indulge in any act which would lower the authority of this institution in the eyes of the public at large. It is stated that he is in custody since last ten months. He has been permitted to attend this Court on every Wednesday and Friday and permitted to visit his residence every Sunday. He has not misused liberty granted by Court to him. It is also stated that he undertakes to this Court that upon being enlarged on bail, he shall not use Facebook and would not do any act which would lower the authority of this Court in the eyes of public. Applicant has relied on decision of Hon'ble Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar & Another***, delivered in Special Leave Petition (Cri.) No.9127 of 2013.

4 The said affidavit cum undertaking is taken on record and marked “X” for identification.

5 Learned APP submitted that during the investigation, the involvement of the applicant is disclosed and there is sufficient evidence against him. It is submitted that the derogatory remarks made against the Judges is a part of charge-

sheet. It is submitted that there was no reason for the accused to pass such comments which would harm the judiciary and the judges of this Court. It is submitted that the link in relation to the Facebook is closed by the police with the help of the accused. It is submitted that contempt proceedings are also initiated against the applicant for certain postings made on the Facebook against the Judges of this Court and the said proceedings are pending.

6 Learned counsel for the applicant, however, submitted that the contempt proceedings are pending and the requisite affidavit is being filed in the said proceedings. It is submitted that in the alleged messages/postings, which are subject matter of charge-sheet, there are no alleged remarks which would outraging modesty of the woman. It is submitted that Sections 354-A and 509 of IPC are not applicable in this case.

7 Having heard both the sides. I have also perused the documents. The applicant is arrested on 7th December, 2017. Charge-sheet has been filed. Learned Sessions Judge while rejecting the application has observed that Sections 509 and 354-A would hardly come into play. It is also observed that hard disc is

seized. It would not be proper to detain accused till the trial is over. The application was rejected on account of defamatory material. It is pertinent to note that the offence under Section 354-A and 500 of IPC are bailable in nature. The trial is pending. Charge-sheet has been filed against the applicant. He is in custody for a period of 10 months. The punishment provided for the offences under Sections 509 and 505 (2) of IPC and Section 67 of IT Act is upto three years. Section 506(2) is not bailable in view of circular and all offences are triable before Court of Magistrate. Applicant has filed an affidavit/undertaking as stated hereinabove. At this stage, the evidence cannot be scanned and evaluated as the proceedings are still pending before the trial Court. Considering the aforesaid circumstances, bail can be granted to the applicant on certain conditions.

8 Hence, I pass the following order :

:: ORDER ::

- (i) Bail Application No.1245 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.25 of 2017, registered

with Cyber Police Station, BKC, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall attend Cyber Police Station, BKC, Mumbai, on first Saturday of every month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Applicant shall attend the trial Court proceedings on every date of hearing, unless exempted by the Court, for some reasons;
- (v) Applicant shall not tamper with the evidence;
- (vi) Applicant shall adhere to the undertaking - cum - affidavit filed before this Court;
- (vii) In the event of breach of undertaking given by the applicant, the prosecution will at liberty to prefer an application for cancellation of bail;
- (viii) Applicant is permitted to furnish cash security of Rs.25,000/-, in lieu of surety for a period of four weeks from today;

- (ix) Observations made in this order are for considering application for bail and the trial Court shall deal with the case in accordance with law;
- (x) Bail Application No.1245 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)