

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

CRIMINAL BAIL APPLICATION NO. 1631 OF 2018

Rafik Abdul Mannan Khan	... Applicant
Vs.	
State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO. 1091 OF 2018
IN**

CRIMINAL BAIL APPLICATION NO. 1631 OF 2018

Ms. Santoshi Ramsagar Gaud	... Intervenor
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In between

Rafik Abdul Mannan Khan	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Subodh Pathak, Advocate for the Applicant.
Mr. Y.Y. Dabke, APP for the Respondent-State.
Mr. Kunwar D. Pandey, Advocate for the Respondent No.2.
Mr. S.J. Kasrkar, PSI, Dahisar Police Station is present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 22nd OCTOBER, 2018.**

P.C.

1. This is an application for bail in connection with C.R. No. 652 of 2017 registered with Dahisar Police Station for the offence punishable under Section 376(2)(n), 323, 504, 506 of Indian Penal Code. The FIR was lodged on 19th December, 2017.
2. The case of the prosecution is that complainant was

acquainted with the accused. Both were of age of majority. They were knowing each other since childhood. They used to visit their house. Their family members were knowing about their relationship. In August, 2016, the accused informed the complainant that he is in love with her. He intends to marry her. Since, the complainant had liking for the accused and she was in love with him, she agreed for marriage with him. The family members were not opposed to their friendship. In August, 2016, the accused called her to his residence. There was independent staircase to the house of the accused to proceed on the first floor from outside. The complainant went to the first floor from the said staircase. The accused induced her to have sexual intercourse with the promise of marriage. Thereafter, the accused used to call the complainant to the said premises and they used to have sexual intercourse. In October, 2017, the accused called the complainant to hotel at Dahisar Check Naka and after booking the room they had physical relationship sometimes with consent of the complainant and sometimes without her consent. Their affair went on for a long period of time. However, since October, 2017, the accused started avoiding her and gave evasive replies on questioning him about their marriage. The complainant suspected

that the accused is having affair with some other girl. In November, 2017, the complainant went to Goa with her friend. They were accompanied by the applicant/accused. They had booked separate room and stayed together. They had sexual relationship. However, whenever the complainant inquired about their marriage, the accused abused and assaulted her. Thereafter, they returned to Mumbai. On 6th December, 2017, the complainant met the accused at his residence and questioned him about the marriage, they again had physical relationship. The accused abused and assaulted her and refused to marry her. Hence, the complainant lodged the FIR on 19th December, 2017.

3. Police proceeded with the investigation. The statement of several persons were recorded. Applicant was arrested and after completion of investigation chargesheet is filed.

4. The applicant preferred an applications for bail before the Sessions Court which was rejected on 3rd April, 2018 and 6th June, 2018. Learned counsel for the applicant submitted that FIR is false. The offence under Section 376 of Indian Penal Code is not made out. The relationship was consensual. The complainant and accused had physical relationship with the consent of each other. They were in love with each other. According to the complainant

on several occasions, there was physical intimacy. The circumstances narrated by the complainant in the FIR itself indicates that they were acquainted with each other and volunteered to have physical relationship. The applicant/accused was interested in getting married to the complainant. However, she got engaged with some other persons. Applicant relied upon photographs of the engagement ceremony of the informant with another person. It is therefore prayed that applicant be granted bail.

5. Learned APP submitted that the accused used to assault the complainant. The consent was obtained on the false promise of marriage and the complainant was induced to have physical relationship. The complainant has stated that on several occasions, the accused had forceful physical relationship with her. After making promise of marriage and inducing the complainant to have sexual relationship, the accused had refused to marry the complainant. It is further submitted that marital life of the complainant has been disturbed by applicant/accused. The accused and his family members had threatened the complainant to withdraw the case. The intervenor/complainant has filed an application for intervention. The prayer for bail has been opposed.

It is submitted that in the complaint it is stated that complainant was threatened by the relatives of the applicant to withdraw the complaint lodged against the applicant. Initially, the police refused to arrest the applicant. The complainant had made several complaints to police authorities. It is further stated that applicant had preferred an application for anticipatory bail which was rejected. The complainant had solemnized her marriage with another persons and her marital life is being disturbed due to the present incident. It is therefore submitted that application for bail be rejected.

6. I have perused the documents on record. As stated above, the complaint was lodged on 19th December, 2017. On perusal of the FIR, it is apparent that the complainant is acquainted with accused since her childhood. They were in relationship. Since 2016, they were having affair. In August, 2016, the complainant had visited the house of the accused and they had physical relationship. The complainant had visited the house and repeatedly there was sexual relationship between them at the said place. According to the complainant, thereafter they had physical relationship at the hotel. In November, 2017 both of them went to Goa and stayed together in a hotel room. They had physical

relationship at the residence of the applicant. It is alleged that accused had made false promise of marriage and had backed out from the promise of marriage. It is thus apparent that on several occasions there was physical relationship between them. The complainant and witnesses have stated that the accused had assaulted the complainant on some occasions. However, they had physical relationship continuously. The medical history also fortified the said fact. Apparently, the complainant was engaged with another persons which appears from the photographs annexed to this application. She performed marriage with another boy. The complainant has annexed the NC complaint lodged by her against the relatives of the accused for alleged threats to withdraw the complaint. Applicant was in custody at that point of time. The complainant also relied upon the First Information Report dated 23rd August, 2018 lodged by her against her husband and in-laws for the offence punishable under Sections 498(a), 406, 323, 504, 506 read with 34 of Indian Penal Code. In the said FIR, it was alleged that her husband and in-laws had ill-treated her and demanded Rs.Five Lakhs from her. It is also alleged that her Stridhan was misappropriated by the said persons. From the said FIR it is apparent that marriage of the complainant was

solemnized on 26th February, 2018. She has also stated that her marriage was fixed in November, 2016 and engagement ceremony was performed on 25th February, 2017. The FIR was lodged against the applicant on 19th December, 2017. According to the complainant she was in relationship with the applicant since August, 2016 till December, 2017. Taking into aforesaid circumstances, it is apparent that relationship was consensual, therefore further detention of the applicant is not necessary. The case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i) Bail Application No. 1631 of 2018 is allowed;
- ii) Applicant is directed to be released on bail in connection with C.R. No. 652 of 2017, registered with Dahisar Police Station, Mumbai on his furnishing P.R. Bond in the sum of Rs.35,000/- with one or more sureties in the like amount;
- iii) Applicant shall not approach or threaten the complainant;
- iv) Applicant shall not enter within the jurisdiction of Dahisar Police Station till the conclusion of the trial;
- v) Applicant shall also attend the trial Court regularly during the date of hearing, unless exempted by the Court for some

reasons;

vi) Applicant shall file an undertaking before the trial Court after his release on bail that he would abide by the condition Nos. (iii), (iv) and (v) stipulated hereinabove.

vii) In the event it is found that the applicant has committed breach of the undertaking, the prosecution shall be at liberty to seek cancellation of applicant's bail;

viii) Bail Application No. 1631 of 2018 as well as Criminal Application No. 1091 of 2018 stand disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.11.15
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