

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

CRIMINAL BAIL APPLICATION NO.2192 OF 2018

Lalchand Tawari

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Ashok P. Mundargi, Senior Counsel i/b. Mr.Vinayak Patil,
Advocate for the Applicant.

Mr.Y.Y. Dabke, APP for the Respondent - State.

Mr.Laxman Deshmukh, PI, V.P.Road Police Station, Mumbai,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 22, 2018.

P.C. :

Applicant is seeking bail in connection with C.R.No.107 of 2018, registered with V.P. Road Police Station, Mumbai, for the offences punishable under Sections 376 and 328 of Indian Penal Code ("IPC", for short) and Section 67(A) of Information Technology Act ("IT Act", for short). First Information Report ("FIR", for short) was registered on 29th March, 2018. Applicant was arrested on 31st March, 2018. Investigation is completed and charge - sheet has been filed.

2 Prosecution case is that the complainant is a bar singer. She is residing at the address mentioned in the FIR. Eight months prior to the incident, the complainant had performed Mujra at Congress Bhavan. In the said programme, she met the applicant - accused. They exchanged their cell phone numbers. After some time the complainant got acquainted with the applicant accused and their relations transformed into friendship. They were in touch with each other. They used to go out. There was consensual physical relationship between the complainant and the accused. Five months ago the accused took the complainant to Sai Shraddha Guest House and there was physical relationship between them. The accused gave Rs.10,000/- to her. Thereafter, they used to meet at the said place once a week and there used to be physical relationship between them. In return accused used to give her money. On 21st March, 2018, they had physical relationship at the said guest House. It is alleged that on 24th February, 2018, the accused called the complainant at Sai Shraddha Lodge. The accused demanded sexual favour. She refused the same. The accused then gave orange juice to drink and after consuming the same, she was unconscious. The complainant woke up on the next day. She found that she was

undressed and accused after administering some substance in juice had physical relationship when she was unconscious. Thereafter, FIR was lodged. She was dropped home by the accused. On 28th March, 2018, aunt of the complainant received objectionable photographs and videos of the complainant. It is further alleged that the co-worker of the complainant also received photographs and video from the accused. Said videos and photographs were objectionable. Hence, FIR was lodged on 29th March, 2018, for the aforesaid offences.

3 Learned counsel for the applicant submitted that the relationship between the complainant and the accused was consensual. It is submitted that according to complainant the complainant and accused were acquainted with each other, and, there was physical relationship between them. It is, therefore, submitted that Section 377 would not be attracted in the present case. Complainant is major woman aged about 22 years. It is further submitted that the complainant has made false allegations that the applicant had forwarded photographs and videos of the complainant to her aunt and to the co-worker. It is submitted that except statement of the complainant, there is no cogent evidence to establish that the applicant had forwarded objectionable

photographs and video to the aunt of the complainant as well as to the co-worker. It is submitted that the applicant is in custody from the date of arrest. Investigation is completed and charge - sheet has been filed. Further detention of the applicant is not necessary. Hence, it is prayed that the applicant be granted bail. Learned APP opposed grant of bail. It is submitted that the FIR clearly mentions that the victim was administered some juice and after consuming the same she felt dizziness and taking the advantage of the situation, the applicant had recorded the videos and clicked her photographs. It is further submitted that the accused then forwarded the photographs and videos to the aunt of the complainant as well as her co-worker. It is submitted that the video clip and the photographs were collected by the investigating machinery through C.D. prepared by the complainant. It is, thus, submitted that no case for grant of bail is made out. It is also submitted that the medical evidence also supports the fact that the complainant had consumed some stupefying substance, which corroborates the version of the complainant. It is, thus, submitted that no ground for grant of bail is made out and the application for bail be rejected.

is completed and charge - sheet has been filed. On perusal of the FIR, it is apparent that the complainant was acquainted with the accused and there was a physical relationship between them. The relationship was consensual. It is also pertinent to note that as stated by complainant she had visited the the lodge where there was a physical relationship between the accused and the complainant. It is apparent that, although, the medical certificate indicate that the complainant had consulted the Doctor due to alleged consumption of the stupefying substance the medical certificate does not mention that the complainant had consumed any substance. It is pertinent to note that the prosecution has recorded statement of Rani Khan, who is the aunt of the complainant. According to the prosecution, the said witness had received objectionable photographs and videos of the complainant. However, the mobile phone of the said witness was not seized by the police and according to the prosecution, the complainant has down loaded the clips and photographs from the cell phone of Rani Khan and it was handed over to the police. Similarly, the statement of the other witness Rajabhai, who is the co-worker indicate that he had received the objectionable photographs and video and the same was down loaded by the complainant in her cell phone. The mobile phone of the said

witness is not seized by the police. Thus, there is no strong evidence to indicate that the video clips and the objectionable photographs were received from the said witnesses and they were forwarded to them by the applicant. It is pertinent to note that the investigation is completed and charge - sheet has been filed. The case for grant of bail is made out.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2192 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.107 of 2018, registered with V.P. Road Police Station, 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 report V.P. Road Police Station, Mumbai, once in a month on first Saturday between 10:00 a.m. to 12:00 noon, till the conclusion of trial;

- (iv) Applicant shall not tamper with the evidence and shall not approach the complainant;
- (v) Bail Application No.2192 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)