

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2271 OF 2018

Kapil Surajmal Sharma, Age 36 years,
Occ.Business, R/o.L/6/16, Jalratandeeep
Bangur Nagar, Link Road,
Goregaon (West), Mumbai-400 062.
(Presently lodged at Thane Central Prison) Applicant
versus
The State of Maharashtra Respondent

Mr.Niranjan S. Mundargi I/by Mr.Prakash Wagh for applicant.
Mr.Raghvendra Mehrotra for intervenor.
Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd October 2018

PC :

1. The applicant has preferred this application for bail in accordance with Section 439 of Code of Criminal Procedure, 1973. The applicant was arrested on 22nd May 2018 vide CR No.174 of 2018 registered with Bangur Nagar Police Station for offence under Section 376 of Indian Penal Code.

2. The prosecution case is that complainant came to Mumbai in the year 2011 to 2012 in search of work. She intended to make her career in modeling. The complainant came into contact with applicant in September-2013. They developed friendship and subsequently fell in love with each other. In November-2013 both of them went to a pub and thereafter they went to the flat of the applicant-accused. The accused attempted to have sexual intercourse with the complainant. In December-2013 they had

physical relationship. Thereafter complainant came to know that applicant-accused was already married. The complainant snapped her ties with the applicant. In August-2014, the complainant again got in touch with the applicant and they renewed their friendship. In June-2015, wife of applicant left him and hence the applicant proposed the complainant for marriage. However, she refused to marry him. The applicant initiated divorce proceedings against his wife. Thereafter the complainant had frequently visited the house of applicant. On promise of marriage, the applicant had sexual relationship with the complainant. The complainant had conceived. In May-2018 the applicant-accused informed her that they should get married after she delivers the child. The applicant stopped meeting the complainant and avoided her. When the complainant met the applicant, he was in company with one woman. The applicant told her that she is his client. The applicant refused to marry the complainant. She was intending to commit suicide, but because of the conception, she changed her mind. The FIR was lodged on 22nd May 2018. On completing investigation charge sheet has been filed.

3. The applicant preferred an application for bail before the Sessions Court. The said application was rejected by order dated 18th August 2018.

4. Learned advocate for the applicant submits that from the charge sheet it appears that no witness supports the case of the complainant that the accused had promised her of marriage and under that pretext had sexual intercourse with her. The complainant is major and educated girl. She came into contact with the applicant in 2013 for the purpose of modeling. According to the complainant,

the accused had sexual relationship with her. Subsequently complainant came to know that the applicant is a married person. Despite this, she kept relations with him. It is further submitted that the wife of the applicant had left him in 2015 and at that time the applicant had proposed the complainant for marriage and she refused to accept the proposal of marriage. It is therefore submitted that the complainant had no intention to marry the applicant. It is further submitted that the complainant had chats with the wife of the applicant. It is submitted that the relationship was consensual and hence the offence u/s 376 of IPC is not made out. Learned counsel relied upon the orders passed by this Court granting bail in similar situation. Learned counsel placed for consideration order passed in Anticipatory Bail Application No.2221 of 2016 wherein this Court had observed that promise to marry in any manner cannot be a condition precedent to have sex. Learned counsel also relied upon the order granting bail passed by this Court in the case of Sunil Mahadev Patil Vs. State of Maharashtra 2016-ALL MR (Cri)-1712 and in the decision in the case of Mahesh Balkrishna Dandane Vs. State of Maharashtra 2015-ALL MR (Cri)-2805, it is submitted that the applicant be released on bail.

5. Learned APP opposed the application for bail. It is submitted that the record shows that after filing divorce petition against first wife, promise of marriage was given by the applicant to the victim. He had physical relationship with the complainant under the pretext of marriage. On account of the relationship, the complainant was pregnant. However, subsequently the applicant backed out from his promise and made plans to get married to another girl. The complainant was frustrated on account of the conduct of the

applicant. She was intending to commit suicide but changed her mind due to foetus in her womb. The applicant was already married with another lady and he had obtained divorce. When complainant was pregnant, he intended to get married to another lady. It is further submitted that consent was obtained on false promise of marriage. It is therefore submitted offence u/s 376 of IPC is made out.

6. The complainant has preferred Miscellaneous Application for intervention in the application for bail preferred by the accused. It is prayed that the application for bail be rejected. It is contended that the accused had made false promises of marriage. The complainant was pregnant on account of physical relationship with the applicant. The applicant has forced the complainant to abort the child. He got married to another lady. The complainant had delivered the child. It is further contended that on account of frustration, the complainant was intending to commit suicide, however, she changed her mind because of child in her womb. Considering the gravity of the offence, the Sessions Court has rejected the application for bail. The earlier application preferred before this Court was withdrawn with liberty to file a fresh application for bail before the Trial Court after the police submits final report. Although the applicant was aware that the complainant was pregnant, she got married to some one else. The DNA report supports the prosecution case, although the applicant had initially denied the paternity. It is therefore submitted that the application be rejected.

7. I have perused the charge sheet. I have also perused the decisions of this Court relied upon by the learned advocate for the

applicant in support of application for bail. The factual matrix of the present case indicate that the complainant was interested in making career in modeling. She came to Mumbai for the purpose of work in 2011 to 2012. She got acquainted with the applicant and their friendship had developed into love affair. It is also apparent that in November-2013 the complainant and the applicant had visited pub. They had consumed alcohol. Pursuant to that the complainant accompanied him to his residence and she stayed in the said night with the applicant. There was physical intimacy between them. Thereafter in December-2013 the applicant called the complainant at his residence. He was consuming liquor. She was offered the drink but she refused to do so. At that time the applicant-accused had sexual intercourse with her. They continued to have relationship. In August-2014 the complainant learnt that the accused is already married to some other lady. Hence the complainant broke her ties with the applicant. In April-2015 the complainant approached the applicant and again they had developed friendship with each other. In June-2015 the wife of the applicant left him. In July-2015 the applicant proposed her about marriage. However, she refused to accept the proposal. The applicant then initiated proceedings for divorce against his first wife. Apparently till this moment, it does not appear that the accused had promised the complainant of marriage and had sexual intercourse with her. On the contrary, the proposal of marriage was rejected by the complainant. However, it is further alleged that thereafter on several occasions, from June-2016 to May-2018, the accused had promised the complainant that he would marry her and had physical relationship with her, which had resulted in pregnancy. It is alleged that thereafter the accused had consulted doctors for abortion, which was not advised by the doctors as the

complainant was pregnant for 18 to 19 weeks. It is alleged that thereafter the applicant showed his inclination to get married to another woman and backed out from the promise of marriage with the complainant. Apparently the relationship was consensual. It can be seen that on several occasions, there was physical relationship between both the applicant and the complainant. It also appears that even after knowledge that the applicant is already married to another lady, the complainant had intimacy with the applicant-accused. The documents annexed to the application also indicate that there are whats app chats between the complainant and the first wife of the applicant. There are also whats app chats between the complainant and the applicant. Apparently these are the documents which are produced by the applicant which is in the form of his defence which indicate that the complainant had not blamed the applicant. The said documents can be looked into at the appropriate stage by Trial Court. However, taking into consideration the factual aspects as emanating from the FIR and the other documents on record, it is clear that the accused and the complainant were in relationship for a long period of time. Applicant is in custody from the date of arrest. The relationship is apparently consensual. The investigation is completed and charge sheet has been filed. In the circumstances, case for grant of bail is made out.

8. Hence, I pass following order :

ORDER

- (i) Bail application is allowed;
- (ii) The applicant is directed to be released on bail in C.R. No.174 of 2018 registered with Bangur Nagar Police Station on furnishing

P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend Bangur Nagar Police Station once in a month on first Saturday between 10 am to 12 noon till further orders;

(iv) The applicant shall attend the Trial Court on every date of hearing, unless exempted by the Court;

(v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;

(vi) Bail Application No.2271 of 2018 along with Criminal Application No.1164 stand disposed off.

(PRAKASH D. NAIK, J.)

MST