

nsc.

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

CRIMINAL BAIL APPLICATION NO.2219 OF 2017

Pratim Pradeep Gujar	... Applicant
Versus	
State of Maharashtra	...Respondent

Mr.Ashok Mundargi, Senior Counsel a/w Mr.Q.N.Shaikh i/b
Mr.S.H.Nimbalkar, for the Applicant.

Mr.S.V.Walve, A.P.P for the Respondent-State.

Ms.Kalyani Tulankar, for the Original Complainant.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st JANUARY, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.38 of 2017 registered with the Yerawada Police Station, Pune, for the alleged offences punishable under Sections 323, 328, 342, 354, 376(2)(n), 506 of the Indian Penal Code.

3. Learned Senior Counsel for the applicant submitted that the complaint lodged as against the applicant is false and baseless. He submitted that the relations, if any, between the prosecutrix and the applicant were consensual in nature. He submitted that there are material discrepancies in the statement of the prosecutrix, her husband, Honeysingh and Lovey. He further relied on the SMSs' exchanged between the prosecutrix and the applicant, in particular the SMSs' exchanged in April 2016, in support of his submission to show that the relations between the two were consensual and not one-sided. He submitted that the said SMS' were filed in the 498-A case lodged by the applicant's wife, as against the applicant. He further submitted that the applicant is in custody since 18th January, 2017.

4. Learned APP opposed the application. He submitted that the statement of the prosecutrix will show that the applicant had threatened her and was trying to blackmail her, as a result of which, she was constrained to keep relations with him. He further submitted that the applicant had even threatened to commit suicide, if she did not keep physical relations with him. According to learned APP, the applicant administered some substance to the prosecutrix on 20th March, 2016, as a result of which, she became

unconscious and pursuant thereto, the applicant had physical relations with her and even took her photographs.

5. Learned Counsel for the original complainant, supported the learned APP. She submitted that the prosecutrix was threatened with dire consequences, as a result of which she was constrained to have physical relations with the applicant. As far as the SMSs' are concerned, she submitted that the same were sent under threat of the applicant.

6. At the outset, it may be mentioned, that this application has been placed before me, pursuant to the administrative order dated 19th December, 2017, passed by the Hon'ble the Acting Chief Justice. Perused the papers in particular the statement of the prosecutrix, her husband, Honeysingh and Lovey and the SMSs'. The prosecutrix, aged 25 years was living with her husband and two children aged 5 years and 7 years. According to the prosecutrix, she met the applicant for the first time on 22nd January, 2016, when she went to attend a party at Hotel Social Clinic at Koregaon Park. She has stated that after the party, the applicant came close to her and kissed her, as a result of which, her modesty was outraged.

She has stated that the said incident was witnessed by her friend Lovey. She has further stated that thereafter, the applicant started visiting her residence and when the applicant realised that the relations between the prosecutrix and her husband were strained, as they used to fight for trivial reasons, the applicant started showing undue sympathy towards her. She has further alleged that in March 2016, the applicant confessed his love for her and threatened that if he could not get her, he would kill himself. She has further stated that thereafter, the applicant would talk to her on phone and that on 19th March, 2016, they decided to go for a movie. She has stated that the applicant instead of taking her for a movie, took her to his flat to bring in her birthday, which was on 20th March, 2016. According to the prosecutrix, on going to the applicant's house, the applicant assaulted her and also banged his head and threatened to kill himself, if she did not listen to him. She has further stated that at midnight, the applicant took her to his neighbour's flat and cut the cake. She has alleged that the applicant forcibly put some crystal like substance in her mouth, on the pretext of feeding the cake. She has further stated that at around 12.30 midnight, the applicant's friend Honeysingh had come to the applicant's house and that the applicant had disclosed to him, that under any circumstance, he wanted the

prosecutrix. She has stated that on account of the substance administered to her, she became drowsy, pursuant to which, the applicant had physical relations with her and took objectionable photographs. She has stated that on the next day, in the morning, she ran away from the applicant's house, when the applicant was in the bathroom. According to the prosecutrix, thereafter from time to time, the applicant had physical relations with her by blackmailing her, by stating that he will show the photographs to her husband. The applicant is also alleged to have asked the prosecutrix to leave her husband. According to the prosecutrix, she disclosed the same to her husband on 8th April, 2016, pursuant to which the applicant again started harassing her. Accordingly, an FIR was lodged in January, 2017. As far as the statement of Lovey is concerned, with regard to the incident dated 22nd January, 2016, she does not disclose about having seen the applicant plant a kiss on the prosecutrix. She has stated that she learnt that the applicant had forcible sexual relations with the prosecutrix, from her husband. As far as statement of Honeysingh is concerned, he has stated that he had seen the prosecutrix in the applicant's house on 19th March, 2016 and that the prosecutrix had disclosed to him that she was a married lady with two children. The said witness has further stated that the applicant had disclosed

to him, that he was extremely fond of the prosecutrix and that he wanted her at any cost. He has further stated that at about 12 midnight, the applicant had gone to the opposite flat, where a cake was cut to celebrate the prosecutrix's birthday. He has further stated that thereafter the applicant and the prosecutrix went in a room and that he heard a quarrel taking place between the two. Admittedly, no objectionable photographs of the prosecutrix were found in the applicant's mobile. A perusal of the SMSs' exchanged between the prosecutrix and the applicant, *prima facie* show a different picture. The SMSs' are of the period 17th April, 2016 and are from page numbers 356 to 386. Considering some of the contents therein, the same are not reproduced. Although, the said SMSs' are not part of the charge-sheet, the said SMSs' were relied upon by the applicant's wife in the Anticipatory Bail Application filed by the applicant in a 498-A case lodged by the applicant's wife. Learned Counsel for the original complainant states that the said SMSs' were sent under the applicant's threat. Be that as it may, whether the relations between the applicant and the prosecutrix were consensual or otherwise, is a matter which will be decided by the Trial Court.

7. Having regard to the peculiar facts of this case and the fact that the applicant has been in custody since January, 2017, the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station on the first Saturday of every month between 10.00 a.m. to 12.00 noon, till the conclusion of the trial;
- (iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The Applicant shall not enter the jurisdiction of Yerawada Police Station, Koregaon Park, Kalyani Nagar and Mundhwa, till the conclusion of

the trial, except for the purpose of attending the police station as per clause (ii);

(v) The Applicant shall not tamper with the evidence or attempt to threaten, intimidate, influence or contact the prosecutrix and her family members, including her husband and children, witnesses or any person concerned with the case;

(vi) The Applicant shall cooperate with the conduct of the trial;

(vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the trial Court, within one week of his release;

(viii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Applicant is at liberty to file an application seeking relaxation of the aforesaid conditions (ii) and (iv) after one year of his

release. If such an application is filed, the applicant shall implead the original complainant, as a respondent in the said application, considering the peculiar facts of this case and on the request of the learned counsel for the original complainant.

9. The Application is allowed in the aforesaid terms and are accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.