

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.572 OF 2019**

Mr. Sunil Gangadhar Dahale Applicant
Versus
The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.693 OF 2019**

Nilam Vaibhav Dhamankar ...Intervener.

IN THE MATTER BETWEEN

Mr. Sunil Gangadhar Dahale Applicant
Versus
The State of Maharashtra Respondent

- Mr. Shirish Gupte, Senior Advocate a/w. Ashwin Shete a/w. Santosh Avhad I/b. Jayakar & Partners for the Applicant.
- Mr. Kuldeep U. Nikam for the Intervener in APPP No.693/19.
- Mr. Prashant Jadhav, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JUNE, 2019**

P.C. :

1. The Applicant is seeking bail in connection with C.R.No. I 156 of 2018 registered with Khandala Police Station, Satara, under sections 376, 452, 420 and 506 of the Indian Penal Code.

2. The FIR is lodged on 08/09/2018 by the prosecutrix.

In her FIR she has given details of how relationship developed between her and the applicant since the year 2013. Both of them are relatives. Since 2013, the applicant allegedly tried to develop close relationship with the prosecutrix. At that stage, prosecutrix was already married and had a son from her marriage. In her FIR, she has given instances when the applicant tried to develop close relationship. Ultimately the relationship went to the stage where they even had physical relationship. In the narration of the FIR prosecutrix has stated that from time to time the applicant was taking financial help in the nature of gold or cash. The FIR further gives instances when they had physical relations. The prosecutrix has mentioned in her FIR that she reluctantly participated. Though she had resisted, the applicant forcefully kept the physical relationship going. The FIR mentions that there were 12 such instances. Such instances were in respect of their encounters in her own house and also in some lodge. The FIR mentions that the applicant thereafter started blackmailing her and on the threat of disclosing her indecent photographs, forced her to continue their relationship. The FIR also mentions that from time to time, the

applicant forced her to part with almost 3 Kg. and 768.5gms. Gold and Rs.51,18,000/- by way of financial help in cash. Based on this FIR, the applicant was arrested on 09/09/2018 i.e. immediately after the FIR was lodged.

3. Heard learned Senior Counsel Shri. Gupte for the applicant, Shri. Kuldeep Nikam, learned counsel for the first informant and Shri. Jadhav, learned APP for the State.

4. Shri. Gupte, learned counsel for the applicant submitted that the nature of the relationship shows that the prosecutrix was a consenting party and there was no force involved at any stage. Only after husband of the prosecutrix came to know about their relationship, the prosecutrix was forced to lodge the FIR against the present applicant. Shri. Gupte invited my attention to the non cognizable case registered by the husband of the prosecutrix on 20-08-2018 against the present applicant, wherein, it was clearly mentioned that the applicant had developed physical relationship with the prosecutrix. After this non cognizable case was lodged on 20-08-18 the present FIR was lodged within a short period i.e. on 09/09/2018. Thus, there is

clear connection between these two and it is quite apparent that the FIR was lodged by the prosecutrix to save herself. Shri. Gupte invited my attention also to a civil suit lodged by the prosecutrix and her husband against the present applicant for recovery of money and gold given to the applicant by the prosecutrix from time to time. Learned Senior counsel further invited my attention to the various messages exchanged between the prosecutrix and the present applicant in the month of July and August, 2018 on social media network.

5. Shri. Nikam, learned counsel for the first informant, on the other hand, submitted that the allegations in the FIR are serious and the offence of extortion apart from rape is also clearly made out. The prosecutrix was forced to continue with the relationship including physical relationship. He submitted that the threat of publishing photographs is more serious, therefore, applicant does not deserve to be released on bail.

6. Learned APP echoed the submissions of the learned counsel for the prosecutrix.

7. I have considered the contentions raised by the parties.

I have gone through the documents annexed to the charge-sheet. The investigation at this stage is over and the charge-sheet is filed. The messages exchanged between the prosecutrix and the applicant formed part of the charge-sheet itself. These messages were exchanged in the month of July and August, 2018. If it is the case of the prosecutrix that she was forced to keep the relationship, then obviously such messages would not have been exchanged between two of them, particularly in the month of July and August, 2018, FIR was lodged shortly in September, 2018. It is also important to note that the FIR was lodged within a very short span of time after the husband of the prosecutrix lodged non cognizable case. Thus, there is much force in the submission of learned Senior counsel for the applicant that the FIR was lodged by the prosecutrix just to save her own skin. Learned APP, on instructions, confirms that the conversation was between the telephone numbers of the prosecutrix and the present applicant.

8. Shri. Jadhav, learned APP pointed out that panchanama was carried out on 27/10/2018 wherein the photographs in question were recovered from the e-mail account

of the present applicant. Though, recovery of such photographs is an incriminating circumstance, there are no allegations that these photographs were circulated or were made public by the present applicant. Moreover, if the applicant was giving threats to the prosecutrix to use these photographs, it was next to impossible for the prosecutrix to keep in touch with the present applicant willingly as is reflected in their messages. The very strong circumstance in favour of the applicant is their exchange of messages during the month of July and August, 2018. The records pertaining to telephone numbers of the applicant and the prosecutrix during that one year period before F.I.R., shows large number of phone calls and messages were exchanged between them. Therefore, at this stage, there is scope to believe that the prosecutrix had willingly kept relationship with the applicant and she was not forced either through the threat of exposure of the photographs or through any other means to continue with the relationship. The exchange of gold and cash is from both sides, therefore, it cannot be directly linked with the threat or extortion at the instance of the present applicant. The statement of the

prosecutrix's employee Shrikant Dalvi shows that between 13/06/2018 to 07/08/2018 on eight occasions gold weighing about more than 800 gms. was brought from the applicant. If extortion theory was true then the applicant would not have given that gold.

9. In this view of the matter, ultimately, both sides will get an opportunity to prove their case during the trial, but at this stage, the applicant has made out a strong case for releasing him on bail during the pendency of the trial.

10. Hence, the following order :

ORDER

- (i) In connection with Crime No.I 156 of 2018 registered with Khandala Police Station, Satara the applicant is directed to be released on bail on his executing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.
- (iii) The intervention application is also disposed of.

(SARANG V. KOTWAL, J.)