

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

BAIL APPLICATION NO.1765 OF 2019

Prasad Dnyaneshwar Tupe	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Aniket Nikam i/b. Mr.Aashish Satpute, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

Ms.Rekha Musale, Advocate for Original Complainant.

PSI Varsha Bambe, Hadapsar Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 21, 2019.

P.C. :

The Applicant is arrested on 4th April, 2019, in connection with C.R.No.307 of 2019, registered with Hadapsar Police Station, Pune, for having committed the offences punishable under Sections 376, 377, 417, 420, 328, 504, 506 and 323 read with 34 of Indian Penal Code ("IPC", for short).

2 The case of the complainant is that in 2012-13, she was student of S.M. Joshi College at Hadapsar, Pune. She got

acquainted with the Applicant, and, thereafter, they had developed friendship. On 23rd September, 2012, Applicant had proposed the complainant. She declined. Accused kept on following her. Subsequently, accused proposed her for marriage. She agreed. On 16th August, 2014, the complainant, Applicant and others went to Shankar Temple at Keshavnagar. Priest was called. The Applicant and the victim had performed marriage. On several occasion there was physical relationship between them. The accused used to click nude photographs and video and under threat of pistol used to have unnatural sex. The complainant has given the details about the places where both of them had relationship. The complainant learnt that accused had fixed his marriage with another girl. The said marriage was broken on 11th June, 2018. There was meeting. Accused agreed that he would not marry any other women. On 16th June, 2018, accused abused the complainant and her sister and threatened her. It is alleged that the Applicant destroyed evidence of marriage. She was assaulted by family members of Applicant and insecticide was administered to her. She was admitted in hospital. On assurance of Applicant, she gave statement to police as per instructions of Applicant on 2nd January, 2019. The complainant subsequently learnt that Applicant had shared objectionable photographs to

various persons. She was informed about the said fact by Anita Ghate and Manisha Kumbhar. FIR was registered on 4th April, 2019.

3 Learned Advocate for the Applicant submitted that false case has been lodged by the complainant against Applicant-accused. No marriage was performed between the parties. Complainant in her statement narrated the places where the alleged marriage was performed, but on inquiry it is revealed that no marriage was performed in the said temple. It is further submitted that the allegation that Applicant had administered insecticide is false. He relied upon the statement of the complainant recorded on 17th June, 2018, wherein it is stated that on account of frustration as reflected in the said statement, she had consumed insecticide. It is submitted that considering the contents of the complaint, it can be said that the relationship between the parties was consensual. The offence under Section 366 or 376 of IPC is not made out.

4 Learned APP submitted that the mobile phone which was recovered from the Applicant is sent for forensic examination. On instructions, it is submitted that the report do

not indicate that there were any objectionable photographs in the mobile phone of the Applicant. He pointed out the statement of witness Pratiksha Patil, recorded on 11th April, 2019, in which it is mentioned that the marriage was performed between the Applicant and the complainant. It is submitted that the nature of abuse is reflected in statement of complainant.

5 Learned Counsel for the intervener submitted that the investigation has not been conducted properly by the police. The pistol has not been recovered from the Applicant. Mobile phone from which the videos were recorded or photographs were clicked was not seized. It is further submitted that the vehicle mentioned in the FIR was not seized by the police. Accused is threatening the victim. She has lodged the complaint against the Applicant to police Authorities, however, the cognizance were not taken and hence, she forwarded the complaint to the Commissioner of Police. She also submitted that the NC case was lodged against the Applicant, which shows that the victim was assaulted and that the accused is in possession of pistol. It is submitted that the accused has falsely denied the performance of marriage, which shows his intention.

6 On perusal of the FIR, it is apparent that the complainant and the victim were known to each other since 2012-13. FIR shows the details of the alleged places where both of them had visited and there was continuous physical relationship between them. It appears that the relationship was consensual. I have also perused the statement of the witnesses recorded during the course of investigation. Statement of Pratiksha Patil recorded on 11th April, 2019, mentions that complainant had informed her in 2013 that she is having affair with Prasad Tupe (Applicant). In 2014, complainant told her that she is performing marriage with Applicant. They went to Mahadev temple at Keshavnagar. Priest performed the marriage. It was attended by close relatives and friends. Statements of Akash Kamthe mentions that Applicant and complainant were close friends. In 2015, complainant had informed him that there is breakup between complainant and Applicant. Manisha Kumbhar has not stated that she had informed complainant about her objectionable photographs. Similar statement is by Anita Ghate. Statement of complainant dated 17th June, 2018, recorded by Hadpsar police station refers to consumption of insecticide by her due to assault and abuse by accused. It is not stated that she was administered insecticide by accused. In the statement of Sandesh Dube, it is stated that he is

performing pooja in Mahadev temple since last 20 years. In 2014 no marriage was performed in said temple except one marriage performed before six months. Statement of Dr.Alkuti mentions that the complainant was threatened by him on 5th February, 2019. She had complained of vomiting, loose motion, stomach pain etc. She was suffering from infection and gastroenteritis with vertigo. Applicant is in custody since 4th April, 2019. There is no recovery of pistol from the possession of the Applicant. It is also noted that according to the prosecution the mobile phone which was recovered was sent for forensic examination, which do not refer to any objectionable photographs. Investigation is completed and charge-sheet is filed. Applicant can be released on bail by on terms and conditions.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1765 of 2019, is allowed;
- (ii) The Applicant be released on bail in connection with C.R.No.307 of 2019, registered with Hadapsar Police Station, Pune, on his executing

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

- (iii) Applicant shall attend Hadapsar Police Station, Pune, once in a month on 1st Saturday of the month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iv) Applicant shall not approach the complainant and shall not threaten her or any other witnesses and shall not enter into the building premises where the complainant is residing;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)