

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

**CRIMINAL APPLICATION NO.1219 OF 2019
IN
CRIMINAL APPEAL NO.1417 OF 2018**

Tushar Damodar Bangera

...Applicant/Appellant

vs.

The State of Maharashtra

...Respondent

Mr. Vinod Kashi for the Applicant/Appellant.

Mrs. M. H. Mhatre, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
SMT. ANUJA PRABHUDESSAI, JJ.
DATE : 10/10/2019.**

PC.:

. Heard learned counsel for the applicant and learned APP for the State.

2. Submission is the applicant as also the prosecutrix were students of same dance class and had love affair. The prosecutrix because of some suspicion discontinued relationship and within few days lodged false complaint. He has further submitted that the Trial Court has ignored the fact that video clip allegedly contained in mobile phone could not be connected with the applicant at all. Neither the mobile phone was proved to be of the applicant nor video clip was proved to be in existence on the date of seizure of mobile. Evidence of Investigating Officer is relied upon to show that on that date mobile phone did not contain any such material. Insofar as showing of video clip on laptop in court is concerned, learned counsel states that, that video clip becomes irrelevant and section 65B

certificate in its support is issued by officer Mrs. Nevge, who on that date was on maternity leave. Thus, contents of that certificate are apparently not proved.

3. Learned counsel adds that in this situation the offence under section 376 is not made out.

4. Learned APP has invited our attention to the fact that the victim was then a minor and hence there was charge also under POCSO. The testimony of the victim and of Doctor and particularly medical certificate at Exhibit 16 are relied upon.

5. The deposition of witness shows forcible relationship only on one occasion. The medical certificate at Exhibit 16 shows injury marks which lends credence to her story.

6. In the backdrop of this deposition of PW-1 and medical certificate we are not at this stage required to look into video clip and other material. Validity of certificate issued under section 65B of the Evidence Act and other arguments can be looked into when the matter is heard finally. At this stage no case is made out for bail. The application is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)

(B. P. DHARMADHIKARI, J.)