

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2773 OF 2019**

Nitin S. Zende

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Dinesh D. Tiwari i/b Dinesh D. Tiwari & Associates for the Applicant

Mr. A. A. Palkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 14th OCTOBER 2019

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. 165 of 2019 registered with the Mulund Police Station, Mumbai, for the alleged offences punishable under Sections 376, 420, 504 of the Indian Penal Code.

3 Perused the papers. According to the complainant, aged 34 years, she was married to one Vinod in November 2013 and that from the said wedlock, she had a child who was born in October 2014. The complainant has stated that in 2015, she lodged a complaint against her husband-Vinod alleging offence punishable under Section 498A of the

Indian Penal Code at Vitthalwadi Police Station, Ulhasnagar and finally in April 2018, the marriage between her and her husband-Vinod was dissolved by mutual consent. The complainant/prosecutrix has alleged that in 2016, she was working and in October 2016, she purchased a Maruti Swift Desire Car for running the same on rental basis.

According to the complainant/prosecutrix, sometime in 2016, she met the applicant who was running his business under the name of Smart Safe Technology Pvt. Ltd., from Mulund. The complainant/prosecutrix has alleged that she informed the applicant about her divorce when she met the applicant. She has further stated that the applicant did not disclose to her that he was married and informed her that he was interested in marrying her. It is alleged that pursuant thereto, they had physical relations some time in May 2017, as the applicant had told the complainant that he would be marrying her. Thereafter, they had physical relations from May 2017 till April 2019. According to the prosecutrix, in June 2017, she asked the applicant to take her to his house and when he took her to his house, she realised that the applicant was married. It is stated by the prosecutrix that the applicant introduced her to his parents and stated that he intended to marry her, sometime in future. The prosecutrix has alleged that the applicant, during their association, had demanded money from her and that she had advanced an amount of Rs. 7,00,000/- to

the applicant on different dates. According to the prosecutrix, the applicant's wife had also lodged a criminal complaint against her in December 2018.

4 Learned counsel for the applicant states that the relations between the applicant, aged 38 years and the complainant/prosecutrix, aged 34 years were consensual. He submits that the aforesaid complaint has been lodged as against the applicant as a counter blast to the NC lodged by the applicant as against the complainant/prosecutrix herein, in December 2018. According to the learned counsel, there was no suppression of the fact that the applicant was a married man and as such, the allegations made by the prosecutrix are false and baseless. Learned counsel also relied on the whats-app chat exchanged between the parties in support of his submission.

5 Whether the relations were consensual or not, is a matter which will be decided by the trial Court. The applicant is in custody since 11th April 2019. Investigation is complete and charge-sheet is filed.

6 Accordingly, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 20,000/-, for a period of six weeks;
- (ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number 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;
- (v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted.

7 The application is accordingly disposed of.

8 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.

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

REVATI MOHITE DERE, J.