

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

BAIL APPLICATION NO.432 OF 2020

Dr. Banshraj Shivbahadur Dwivedi ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Ganesh Gole i/by Mr. Ateet Shirodkar and Satish Mishra for the Applicant.
Ms. P.P.Shinde , APP for the Respondent-State.
PI Madhusudan Naik attached to Meghwadi P.Stn.
Present.

CORAM : SANDEEP K. SHINDE J.
DATE : 28th FEBRUARY, 2020

P.C. :

Heard.

2 Applicant is seeking his enlargement on bail in Crime No.215 of 2019 registered with Meghwadi Police Station for the offences punishable under Sections 376(2)(n), 506, 500, 328 of the Indian Penal Code, 1860 ('**IPC**' for short) along with Section 67-A of the Information Technology Act, 2000.

3 Applicant is a medical practitioner and is 58 years old. Victim, who was allegedly sexually exploited by the applicant, was about 22 years old when the alleged incident had taken place. It is her case that, in May, 2015, when she had been to clinic of the applicant for treatment, applicant had administered an injection to her whereafter she fell, unconscious whereupon she alleged that the applicant sexually exploited her and recorded video clip of the alleged act. She did not disclose about the said incident to anyone, however, she alleged that on confronting the applicant about the said video clips, he threatened to make the video clip viral and under that guise, was repeatedly sexually exploiting, even after her marriage. It is her case that the alleged obscene video clip recorded by the applicant was received on mobile of her husband and thereafter, subject complaint was

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lodged and the offence came to be registered as aforesaid whereby the applicant came to be arrested soon thereafter.

4 It is submitted that the investigation is over and the trial is not likely to commence and/or conclude in near future. Applicant has deep roots in the society and he would be available for the trial. It is further submitted that the applicant has been falsely implicated in the case in-as-much as applicant never forced the complainant to submit herself to his physical desires.

5 In the course of the investigation, the alleged video clip was recovered from the pen drive. It was seen by the lady officer and accordingly, whereafter she filed her report/statement. I have perused the statement/communication received from the Assistant Police Inspector attached to Meghwadi Police Station.

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This statement, prima-facie, shows that the victim voluntarily submitted to the physical desires of the applicant and further she was not administered any injection in-as-much as she was found well oriented and conscious in the video clip. Report/Communication of the said officer is taken on record.

6 Thus, in view of the communication/report of the lady officer, it may be stated that allegations of the complainant that she was administered injection and when she fell unconscious, she was sexually exploited by the applicant, prima-facie, may not be correct. Therefore, it is to be held that the victim consented to physical relations with the applicant.

7 As far as the contention regarding any material to show that the applicant had transmitted alleged video clip containing sexually explicit act is concerned, it may be stated that punishment for

publishing or transmitting material containing sexually explicit act in electronic form is punishable with imprisonment, which may extend to five years. In this case, prima-facie, there is no evidence to suggest that this clip was sent by the applicant on whatsapp account of the complainant's husband. However, the fact remains that this video clip is now available on social platform. The learned counsel for the applicant disputed that the applicant had recorded video of the obscene act. As to whether it was recorded by the applicant and/or by the complainant is a question to be answered only after the evidence is led and after receiving the report to that effect.

8 At the cost of repetition, it may be stated that at the relevant time when the incident had taken place, complainant was 22-23 years old and thus, was aware of the consequences of the acts, she indulged into. That since investigation is over and the trial is not

likely to commence in future but since applicant's presence for trial can be secured by imposing suitable conditions and additionally in view of the facts of the case and in view of the evidence available on record, applicant is directed to be released on bail. Hence, following order:

ORDER

- (i) The applicant be enlarged on bail in Crime No.215 of 2019 registered with Meghwadi police station, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall report to the Investigation Officer of the concerned Police Station on the second Monday of every month commencing from March, 2020 between 11:00 a.m. to 1:00 noon till the charge is framed;
- (iii) The applicant shall inform his latest place of residence and contact number within two weeks from the date of his release on bail to the Investigating Officer of the concerned Police Station;
- (iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The State shall take all the steps to remove obscene video clip from the social media/platform.

9 The application is allowed and disposed off in the aforesaid terms.

10 Registry is directed to keep the statement/report of the lady officer in sealed envelope.

11 It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)