

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.54 OF 2021

Amitkumar s/o Ashokkumar Bhumihar = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.SV Kurundkar, Advocate, i/by Adv. RN Chavan,
Advocate for Applicant;

Mr.SB Narwade,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 16/03/2021

PRONOUNCED ON : 04/05/2021

PER COURT :-

1. Present applicant has been arrested on 27.8.2020 by Bhusawal Bazarpet police station, District Jalgaon in connection with CR No. 803/2020 for the offences punishable under Sections 376, 376(2)(n), 506 of IPC and Section 66(E), 67, 67(A) of Information and Technology Act. He has filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate for the applicant and learned APP for Respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the informant is a Bank Manager, aged 30 years old lady, working at

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Bhusawal branch. She says that she came to know the applicant through Facebook and thereafter they used to meet each other. It was represented by the present applicant to her that he is a Captain in Indian Army. He came to meet her in a rented premises of the informant. He used to promise her that they would marry very soon as nobody should obstruct visits of the applicant. She had introduced the applicant as her husband. She then says that between 18.9.2019 to February 2020, the applicant has committed rape on her and had videographed the acts in his mobile. Thereafter, the prosecutrix had received a phone call from a lady, who disclosed that she is wife of the present applicant and the applicant has two children. She shared the documents regarding the service of the present applicant; their marriage photographs; children photographs; voters list etc., to father of the prosecutrix. The prosecutrix's father then obtained mobile numbers of the parents of the present applicant and cross-checked the information. The prosecutrix then says that she then got the knowledge that she has been cheated and then she told the applicant that since he has already married and having children, she will not perform marriage with him. The applicant got annoyed with the same, and by giving threats and blackmailing her, that he would make obscene videos viral, had also harassed parents of the prosecutrix. Threats have been given on Whatsapp. Audio clips have been given and, therefore, she lodged the report.

4. It has been further submitted on behalf of the applicant that, after giving the above said story, that has been reflected in the FIR, the investigation is complete and charge sheet has been filed, vide RCC No.138/2020 before the JMFC, Bhusawal, further physical custody of the applicant is not required for the purpose of investigation.

5. Perusal of the entire charge sheet would show that the prosecutrix is major and had knowledge about the acts done by her. It appears that it was the voluntary acts of the prosecutrix to enter into such kind of relationship and, therefore, offence under Section 376 or 376(2)(n) of IPC cannot be said to be made out.

6. Learned Advocate for the applicant has relied on a decision in the case of Paresh Babu Solanke Vs. State of Maharashtra (Bail Application No. 518/2017 decided on 3rd April, 2017) by the Principal Bench of this Court, which was application under Section 439 of Cr.P.C., wherein, taking into consideration the fact that the prosecutrix was aged 20 years and had entered into voluntary relationship with the accused, the said applicant came to be released on bail. The applicant will not abscond and he is ready to abide by the terms of the bail. It is stated that he is employed in Indian Army and because of his absence from the service, if he is not allowed to resume his duties; he would be required to give up his

service. The most glaring part is that there is delay of about six months in lodging the report, which has not been satisfactorily explained. The medical report is not supporting her contention. The statements of the neighbouring persons would disclose that the prosecutrix and the applicant were staying as husband and wife. Therefore, it would be unjust to ask the applicant to remain behind the bars.

7. Per contra, learned APP strongly opposed the application and submitted that a person employed in Indian Army cannot afford to face such kind of allegations, if he is a true person. A soldier, who gives up everything for protection of country and citizens of the country, will not indulge himself in such activities. But such heinous crime has been committed by the applicant. He took disadvantage of the position of the prosecutrix. There are number of examples, wherein persons have been cheated by such social media like Facebook. The prosecutrix believed in what was represented by the applicant. It appears that the applicant is a Sipoy, but he posed himself as Captain in the Indian Army. He suppressed the fact that he was already married and having two children. If the consent, even if for the sake of the arguments, accepted for the physical relationship, was taken, it was under fraud and suppression of facts, which is not at all contemplated when it comes to the ingredients of Section 375 of IPC. Only after the prosecutrix

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could receive the phone call from the wife of the applicant and exchange of documents by her; the prosecutrix could come to know about the real facts. Till then, the applicant, by keeping her in dark, had established physical relationship and he had videographed their sexual acts, which is another heinous crime. When it was revealed that the applicant had cheated the prosecutrix, and then she refused to succumb to the further requests of the applicant, he started blackmailing her and giving threats to kill. The text messages, which were sent on Whatsapp about giving threats to the prosecutrix, have been produced on record. There is danger to life of the prosecutrix and, therefore, the applicant does not deserve to be released on bail.

8. At the outset, it can be seen that the decision, as aforesaid, on which the learned Advocate for the applicant has placed reliance, cannot be used as precedent because it is delivered by the learned Single Judge of this Court and that too on the basis of the facts of that case and the Court had come to the conclusion that it was the voluntary act. The orders passed under the Bail Applications cannot be binding on co-equal Bench.

9. The facts have already been noted, which are in the FIR and they are reflected in the same way in her statement under Section 164 of Cr.P.C. recorded by learned JMFC, Bhusawal. Now, as regards the alleged delay is concerned, whether it

is fatal to the prosecution case or not, would be considered by the trial Court. But certainly a submission can be made that every delay cannot be said to be fatal to the prosecution. Further, if the informant was not at all having knowledge that she was being cheated and the alleged consent taken from her is under fraud or there is suppression of fact and if that fact would have been known to the informant – prosecutrix, then she would not have given consent, then starting point cannot be from the actual commission of the act, i.e. rape, but would be from the date of the knowledge of suppression of such fact. Further, as regards the contents of the FIR and the other documents on record show that after such information was received from the wife of the applicant, the informant and her family members had cross-checked it and then they had reacted. Therefore, strictly speaking; at this *prima facie* stage, there appears to be no delay, much less fatal, in lodging the report.

10. Another fact to be noted is that the informant has stated that the applicant had videographed the obscene acts. It appears that the mobile phones have been seized and it appears that now those mobile phones have been sent for their chemical analysis. That muddemal would disclose the facts further as to whether the offence under the Information and Technology Act, has been committed or not. The Hash Value of the pen-drive has been taken.

11. In the FIR itself the informant has explained that she had introduced the applicant as her husband so that she could meet him without any resistance. It appears that she was residing alone in a rented premises and when she believed that the applicant would marry her, it appears that she had taken that step. Naturally, the statements of those witnesses would reflect the said fact.

12. There is material on record to show that the applicant was previously married and he has two children. When this Court made certain queries in respect of the leave, that would have been obtained by the present applicant to come down to Bhusawal to meet the prosecutrix, then whether there is any such record, a photo copy of a letter issued by Lt. Colonel, dated 15th March, 2021, is given, which says that the present applicant is employed in the rank of Sipoy and he was on 30 days leave from his previous unit. Period has not been given in this letter. But, when the defence that the applicant intends to take, that it was a voluntary act on the part of the informant to enter into physical relationship, then it implies that he had come down to Bhusawal on some point of time. There is also evidence on record that now there are threats given to the prosecutrix and her family, as per her story, it is given by the present applicant and he had also given threats to make the clips viral. Taking into consideration the language used in the threats, possibility of threat to life of the

prosecutrix, cannot be ruled out.

13. Now, as regards the medical report is concerned, definitely when the medical examination itself has taken place after the period of six months, there cannot be mark of violence on the body. Therefore, I do not find any substance in that point that has been raised on behalf of the applicant. Taking into consideration the manner in which the offence is committed; the suppression of facts by a person employed in Indian Army, which is a very noble institution and the country is proud of our soldiers, for the acts done by the applicant, though he is in Indian Army, does not deserve to be released on bail. Hence, the Bail Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV