

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.103 OF 2021

Sandeep s/o Sanjay Jadhav,
Age 25 years, Occupation Education,
R/o Akola (Deo) Tq. Jafrabad
District Jalna.

...Applicant

VERSUS

The State of Maharashtra,
Through The Police Station Tembhurni
Tq. Jafrabad District Jalna.

...Respondent

.....
Advocate for Applicant : Mr. K. A. Kadam
APP for Respondent : Mr. D. S. Jape
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
01-03-2021.**

**Date of Pronouncing The Order :
09-03-2021.**

ORDER :

1. Present applicant has been arrested on 22-10-2020, in connection with Crime No.189 of 2020, by Police Station Tembhurni Taluka Jafrabad District Jalna, for the offences punishable under Section 376 (2) (n), 354, 506, 34 of Indian Penal Code and under Section 67 (A) of the Information Technology Act, 2000. He has filed

the present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. K. A. Kadam for applicant and learned Additional Public Prosecutor Ms. D. S. Jape for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated by the informant. Informant was residing in the neighbourhood of the applicant and they were knowing each other since many years. The alleged act of rape is stated to have been committed about a year prior to the First Information Report, however she has not lodged any report. There was love affair between the present applicant and the informant and, therefore, whatever has happened between them is a consensual act. Now she has lodged a concocted story in view of the fact that she got married in between, and it is her say that, her husband gave her Talaq after this applicant had shown her husband the pictures/ photographs between the applicant and the informant which were in objectionable situation. The present applicant had never made those objectionable photographs or videos viral. Now the

investigation is over and entire material has been seized by police. The further physical custody of the applicant is not required. Applicant is a young person pursuing his studies and, therefore, he need not be kept behind bars as it will take long time to stand his trial.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the applicant and submitted that in her First Information Report the prosecutrix has clearly stated that the present applicant committed rape on her in the afternoon about a year prior to the First Information Report by taking disadvantage of the fact that she had gone to meet her friend who is the sister of the present applicant. The sister of the present applicant went somewhere else and at that time the present applicant and co-accused gave threat to kill the brother and father of the prosecutrix, applicant committed rape whereas co-accused had made video shooting of the said act. Thereafter, they used to call her and by showing the video and photographs, and by giving threat to defame her, applicant used to commit rape on her time to time. The applicant had also given threat that he will not allow the marriage of the prosecutrix to happen, and if it happens, then he would show those photographs

and videos to her husband. After marriage, prosecutrix went to her matrimonial home but the applicant went there in drunken condition. He showed the videos to her husband and also told that if he keeps the prosecutrix in his house then he would make those video clips viral. On the next day, her husband had given her Talaq and sent her back to her parental house. Under those constrained circumstances she has approached the police. The acts done by the present applicant are heinous. Charge-sheet is filed and it shows that the mobile phone of the present applicant was recovered. It was containing objectionable photographs and videos. The seized articles i.e. mobile phone, memory card etc. have been sent for Forensic Analysis. The applicant has made his objectionable videos viral to the relatives of the prosecutrix, under such circumstance he deserve no sympathy.

5. It is to be noted that the prosecutrix has lodged report on 20-10-2020, and she states that, he alleged act of rape was committed about a year prior to that. While giving the First Information Report she has given her age as 19 years. That means, when the alleged act of rape was committed, she was 18 years i.e. completed 18 years, in other words she was not minor on the date of offence. It

also appears that the present applicant is the neighbour of the prosecutrix since many years. She also states that the sister of the present applicant was her friend and, therefore, they were on visiting terms with each other. According to her, the first act was done when she had gone to the house of the applicant to meet her friend, but her friend was not present in the house and she was alone at that time in his house. According to her, at that time the rape was committed by the present applicant and co-accused had made video shooting in his mobile. Further after showing her those clips and photographs, it is stated that subsequent acts have been done by the present applicant so also threats were given to her. The fact remains that, for a year she has not lodged any report against the present applicant. This delay is definitely required to be considered while considering the bail application.

6. It is further to be noted from the First Information Report that the informant got married in September 2020 and went to her matrimonial home at Jalna. But then she says that the present applicant went to her matrimonial home on 16-10-2020 under drunken condition and then after making inquiry with the sister-in-law of the prosecutrix, he had got the mobile number of the husband

of the present applicant. He met her husband at about 06.30 p.m. and showed him their videos, and told that they are having love affair, and he says that, thereafter threat was given to make those clips viral. She also states that the said video has been sent to many persons. But then she also states that, her husband had kept the mobile phone of the present applicant with him and on the next date he had called the relatives of the prosecutrix, showed them the videos from the mobile of the present applicant, gave the mobile in the hands of brother of the prosecutrix, her husband thereafter took bond in a form of 'Talaknama' and sent her to her parental house and, thereafter, she has lodged the report.

7. In the present case the statement of witnesses have been recorded. The mother of the present applicant has stated that she came to know about the incident only after the husband of prosecutrix had called her and showed the photographs and videos to her. Though in the First Information Report itself it is stated that the mobile phone of the present applicant was given by the husband of the prosecutrix in the hand of her brother Javed, statement of Javed has not been recorded under Section 161 of Code of Criminal procedure. Father of the prosecutrix also states that he came to

know about the entire facts only after he got a call from son-in-law on 16-10-2020. Other two relatives of the prosecutrix who had gone to the matrimonial home of the prosecutrix also show that the husband of the prosecutrix had shown them those photographs and videos. Witness Wahedkhan Hayatkhan Pathan states that husband of the informant handed over two mobile phones of the present applicant one is Samsung Company and another is Lava Company and the memory card to him when the prosecutrix was asked to go to her parental house. None of them are stating that they had received any clip which was allegedly made viral by the present applicant.

8. If we consider seizure of mobile, Digital Versatile Disc (DVD) and hash value calculate panchanama drawn on 24-10-2020 then it can be seen that Samsung company mobile was produced by cousin brother of the prosecutrix Wahedkhan Hayatkhan Pathan. The contents of the said panchanama also contends as to what was seen / what are the contents in the said clip, suffice it to say that, they were having consensual relations. It will not be out of place to mention here that when the Investigating Officer was called before this Court to know as to whether he has taken the transcript of the clip before sending it to the Forensic Lab, he has stated that he has

not taken a detailed transcript except the said panchanama dated 24-10-2020, and he had shown certain photographs but they were not objectionable. Now the learned Advocate for the applicant has produced certain letters which are stated to be love letters written by the prosecutrix to the applicant. However, those letters cannot be considered here for the simple reason that they are yet to be proved and the documents from defence cannot be so accepted.

9. Suffice it to say that this case appears that of consent as well as there is huge delay in lodging the report. Under such circumstance, the applicant need not be asked to remain in jail as it would take long time to stand his trial. At the same time taking into consideration the fact that the prosecutrix has now returned to her parental house which is adjacent to the house of the applicant, stringent conditions are required to be imposed on the applicant. Hence, following order.

ORDER

1) Applicant i.e. accused No.1 Sandeep s/o Sanjay Jadhav, arrested in connection with Crime No.189 of 2020, registered with Police Station Tembhurni Tq. Jafrabad Dist. Jalnam, for the offences punishable under Section 376 (2) (n), 354, 506, 34 of Indian Penal Code and under Section 67 (A) of the Information Technology

Act, 2000, be released on P.R. of Rs.50,000/- (Fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).

2) The applicant shall not tamper with the evidence of the prosecution in any manner.

3) He shall not indulge in any criminal activity. He shall not visit village Akola Deo Tq. Jafrabad Dist. Jalna and shall not try to make a contact with prosecutrix.

4) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.

5) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-