

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.327 OF 2021

ATUL S/O BHIMRAO RATHOD
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. S. J. Salunke, Advocate for the applicant.
Mr. S. B. Narwade, APP for the respondent.

.....
WITH
CRIMINAL APPLICATION NO.788 OF 2021
IN BA/327/2021

XYZ
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Mr. D. P. Munde, Advocate for the applicant.
Mr. S. B. Narwade, APP for respondent No.1.
Mr. S. J. Salunke, Advocate for respondent No.2.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 8th April, 2021

ORDER :-

. Present applicant has been arrested in connection with Crime No.8 of 2021 registered with Sirsala Police Station, Dist. Beed for the offences punishable under Sections 376(1)(2)(N), 417, 506 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. J. Salunke for the applicant and learned APP Mr. S. B. Narwade for the respondent – State assisted by learned Advocate Mr. D. P. Munde for original informant.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that prosecutrix is major i.e. 21 years old girl. She says that she got acquainted with applicant in the year 2018 and there was friendship between them. Applicant used to go to her house when nobody else present there. He took her mobile number and used to call her. She then states that she was harassed by the present applicant, but then it appears that she had not lodged any report against the present applicant. One and half months prior to the lodging of the FIR, the applicant had approached her and by giving promise to marry, he had tried to be near with her, however, she says that she avoided him by saying that she has no intention to marry with him. But, still applicant gave her threat and told that if she does not establish physical relations with him, he would make their photos viral. Then she again states that in the month of March, 2018, they had physical relations in the neighbouring field and then there used to be physical relations between them from 2018 to October, 2020. She also states that time and again she used to ask as to when he is going to marry her. Thereafter, when she was giving phone calls to the applicant, he was not

picking up and, therefore, she states that in spite of keeping physical relations under the pretext of marriage, he has cheated her.

4. It has been further submitted on behalf of the applicant that the allegations in the FIR would definitely *prima facie* show that the physical relations between two adults were by consent and, therefore, they do not constitute any offence as defined under Section 375 of the Indian Penal Code. There is no evidence against the present applicant. The medical evidence also does not corroborate the contents of the FIR. The statement of the prosecutrix under Section 164 of the Code of Criminal Procedure appears to be an exaggeration. Now, the evidence is collected and charge-sheet is also filed. It is less likely that the trial would commence and, therefore, with such kind of evidence, the applicant need not be asked to linger in jail. He deserves to be released on bail.

5. Per contra, the learned APP well assisted by learned Advocate for the original informant strongly opposed the application and submitted that the applicant has committed heinous crime. Under the pretext of marriage, he has got the consent of the informant – prosecutrix, but if such consent is obtained under a false promise of marriage, then it cannot be said to be a consent at all. It was also taken under the threat

to make the photographs or videos viral. Whatsapp chat, which has been annexed to Criminal Application No.788 of 2021, would show that the applicant possesses such videos or photographs. He is also giving threat to kill the informant and her maternal uncle as well as brother. So, there is threat to the life of the informant and her family members. Release of such accused on bail would give wrong message to the society.

6. At the outset, it is to be noted that the prosecutrix is aged 21 years as on today and even if we take the FIR as it is, in the years 2018 also, she was major. Though she says that the first act was allegedly committed in the year 2018, till 2021 she has not lodged any report nor she had disclosed it to her own family members also. Contents of the FIR appears to be not in chronological order or there appears to be jumbling. At one stage, she says that she had refused to perform marriage with the applicant and the said statement starts with words “prior to one and half month”. That means, that one and half month will have to be reckoned from the date of the FIR. If she says that she had avoided any sexual contact between her and him till one and half month prior to the FIR, then the subsequent statement or part of her FIR stating that since 2018 till October, 2020 they had sexual intercourse appears to be not in consonance with the earlier statement. That can be

got explained at the time of her evidence. If her statement under Section 164 of the Code of Criminal Procedure is considered, then there appears to be a chronology and then she says that under the threats of killing her brother and maternal uncle, the applicant has committed rape on her time and again. She then says that due to those threats, she had not lodged any report with the police. Even if her said statement under Section 164 of the Code of Criminal Procedure is taken as it is, there appears to be *prima facie* delay in lodging the report. Naturally, if her medical examination is after long time, then the fresh evidence, which might be possible in case of fresh incidence, is not appearing. However, the medical officer has opined that possibility of sexual intercourse cannot be ruled out. There are statements of witnesses, however, it is to be noted that they are based on the information that was later on shared by the prosecutrix with her near relatives. Therefore, with this kind of evidence, he deserves to be released on bail, however, at the same time, taking into consideration the photographs of the Whatsapp chats produced by the prosecutrix, which are stated to be from the mobile of the applicant and they are amounting to threats, suitable conditions are required to be imposed and a strict warning will have to be given to the applicant, that any act of tampering with the evidence of the prosecution would be taken as a step towards

cancellation of bail. With these observations, following order is passed :-

ORDER

- I) Bail application stands allowed.
- II) Criminal Application No.788 of 2021 filed for Assist to PP stands allowed and disposed of.
- III) Applicant – Atul Bhimrao Rathod, who has been arrested in connection with Crime No.8 of 2021 registered with Sirsala Police Station, Dist. Beed for the offences punishable under Sections 376(1)(2)(N), 417, 506 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- IV) He shall not tamper with the evidence of the prosecution in any manner.
- V) Any act of tampering including contacting informant – prosecutrix or her any of the relatives either on phone or physically or through anybody, would entitle the prosecution/informant to file an application under Section 439(2) of the Code of Criminal Procedure.
- VI) He shall not visit Nathnagar, Jivanapur, Tq. Majalgaon till the conclusion of trial. He should reside elsewhere and before submission of bail papers, the applicant should give complete address of his proposed residence to the Investigating Officer and

the learned Trial Judge.

VII) He should give his mobile number which he would be using till the conclusion of the trial to the Investigating Officer as well as to the learned Trial Judge. He shall not change that mobile number till the conclusion of the trial.

VIII) He should not indulge in any criminal activity.

IX) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm