

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1023 OF 2021

Vishal s/o Vitthal Dhole

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Shaikh Mazhar A Jahagirdar, Advocate for the applicant.

Mr. N.T. Bhagat, APP for respondent/State.

Mr. P.S. Dighe, Advocate for informant.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 18th November, 2021.

PRONOUNCED ON : 10th December, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 2095/2020 registered with Shrirampur City Police Station, Dist. Ahmednagar, for the offences punishable under Sections 376, 376(2)(n), 376(D), 385, 386, 120(B), 420, 323, 506 read with Section 34 of the Indian Penal Code.

2. Facts leading to this application are that accused Prasad Mahamine was the school mate of the informant. Informant married

in the year 2014 but she took divorce in the year 2016. Accused came to know about this development in the life of the informant. Applicant is the husband of sister of accused Prasad. Informant was in search of job. Accused Prasad said to her that she would get a job in Pune as he had contacts in Pune. In August, 2018, informant went to 4th Floor, Gera Sterling, near Jerman Beckery, Usani Nagar, Koregaon Park, Pune for interview upon the information given by accused Prasad that there was a vacancy. Accused Prasad had taken her on motorcycle from bus stop to the venue of interview. After the interview, informant started feeling unwell due to which, accused Prasad gave her a tablet. Accused Prasad is a Medical Representative. Informant believed him and swallowed the tablet. Accused Prasad said to her that she should rest for a while and then she can go to Shrirampur in bus. Thereafter she lost consciousness. When she regained consciousness, she found herself in a lodge. She realised that she was raped by the applicant. Informant started crying loudly. Accused Prasad said to her that he had done video shooting of the informant and he would make the video clip viral. Informant did not take any action because of these threats. In the month of October 2018, again, he committed rape on her in the lodge at Shirdi by putting her in fear to make the video clip viral.

3. It is further alleged in the First Information Report that she got married again in the year 2019. However, she obtained divorce. Accused Prasad got knowledge of the same.

4. It is further alleged that on 15th July, 2019, accused Prasad again called her to Pune for interview at 5th Mile Nagar Road, Clover Park, Viman Nagar, Pune. Accused Prasad took her to Trimurti Vihar, Fursungi, Hadapsar, Pune between 2.00 and 4.45 pm and took her to a lodge and committed rape on her twice. At that time, he had threatened her to make her video clip viral. On 2nd August, 2019, accused Prasad took the informant to his sister Pooja Vishal Dhole. He got her admitted in a ladies hostel at Sai Shree PG Accomodation, SP Traders Office line, Near IBM Infocity, Hadapsar, Saswad Road, Fursungi, Pune. He committed rape on her by threatening her to make the video clip viral. Accused Prasad had told the informant that Pooja Dhole does the business of providing tiffins and she works as investment agent.

5. It is further alleged in the First Information Report that accused Prasad demanded Rs. 5,00,000/- from the informant in the

month of November 2019. Informant, because of the threats given by the accused, requested her father to pay Rs. 5,00,000/- to accused Prasad as handloan. Accordingly, amount of Rs. 5,00,000/- was deposited in the account of accused Prasad in Axis Bank on 31st December, 2019. Father of the informant was again forced to transfer amount of Rs. 51,94,600/- in the account of Pooja Dhole.

6. It is further alleged that on 28th February, 2020, at about 8.30 pm, informant had been to the house of Pooja Dhole as Pooja had invited her to her house. At that time, Pooja left the house saying that she would be back in a few moments. At that time, applicant and informant alone were in the house. Applicant closed the door from inside. At that time, informant realised that applicant was under influence of alcohol. She tried to ran away but applicant muffled her mouth and dragged her to a bed and threatened her that he would make the video clip viral and thereafter he committed rape on her.

7. It is further alleged that on 5th March, 2020, Pooja threatened her that she would make viral the video of rape by applicant. This incident happened at 9.00 pm. At that time,

informant realised that applicant had prepared video clip of rape. Accused Pooja and applicant took ATM card from the informant and withdrew the amount from ATM. On 6th March, 2020 also, amount was withdrawn from ATM by Pooja and applicant and she retained ATM card with her. Accused Prasad, applicant and Pooja extorted amount of Rs. 61,44,600/- from the informant by threatening her to make the video clip viral. Accordingly, she lodged First Information Report on 21st October, 2020.

8. Heard Shri Shaikh Mazhar, learned counsel for the applicant, Shri Bhagat, learned APP for the State and Shri Dighe, learned counsel for the informant assisting APP.

9. Learned counsel Shri Mazhar submitted that entire allegations are against accused Prasad. He submitted that the incident took place in the month of August 2018 and the complainant had lodged the present complaint in the month of October 2020. Thus, there is inordinate delay in lodging the First Information Report. No explanation is forthcoming for the same. He submitted that the narrations in the First Information Report clearly show that they are fake and bogus. He submitted that there are money lending

transactions between the informant, her father and applicant, accused Pooja and Prasad. He submitted that accused Pooja Dhole has remitted the amount to the informant and her father. There are various instances of amount being deposited in the account of Pooja and Pooja remitting the amount in the account of informant and her father. He submitted that this clearly shows that there were money lending transactions. Informant has given colour of rape to it. WhatsApp messages clearly show that applicant's wife Pooja is working as agent. He submitted that Pooja has remitted substantial amount to the informant. Even if it is assumed for the sake of argument that there was sexual intercourse, the tenor of the complaint shows that it was with consent. He submitted that the video clips are nowhere to be seen. He has, therefore, prayed for releasing the applicant on bail.

10. Learned APP Shri Bhagat and Shri Dighe, learned counsel for the informant submitted that amount of around Rs.60,00,000/- has been paid to accused Prasad and Pooja. They submitted that a paltry amount has been transferred in the account of the informant and her brother Suyog. They submitted that accused have purchased gold from the amount paid by the informant

and her brother. Both of them submitted that applicant also committed rape on the informant.

11. From the allegations made in the complaint, it appears that applicant is the husband of sister of accused Prasad. Accused Prasad is the class-mate of the informant. Applicant has provided a handwritten chart along with statement of account of Pooja Dhole, Prasad and applicant Vishal. From the chart supplied by the applicant, it appears that total amount paid by the informant and her brother Suyog comes to Rs. 61,34,235/-. From the charge submitted by the applicant, it reveals that Pooja, Prasad and applicant Vishal had paid around Rs. 44,00,000/- to the informant and her brother. The chart submitted by the applicant further shows that applicant had paid Rs. 52,050/- to Suyog, the brother of the informant. Thus, chart submitted by the applicant clearly shows that Prasad, Pooja and applicant had received amount of Rs. 61,00,000/-. Without going into the authenticity of this amount, it can be said that there is a financial transaction between Pooja and Prasad on one hand and informant and her brother on the other hand. Applicant has paid Rs. 52,050/- to Suyog. Applicant has contended that this is a money lending transaction. Because of some dispute, the informant has

implicated them falsely in this case.

12. So far as applicant is concerned, informant does not seem to have any dealings with the applicant. She has alleged that applicant had raped her when accused Pooja had left the house for some time. This incident took place on 28th February, 2020 at 8.30 pm. Allegations against the applicant are serious in nature. Mobile and semen and pubic hair of the applicant are sent to Chemical Analyser. The report is not yet received. In this view of the matter, it will not be appropriate to release the applicant on bail at this stage. In view of this, following order is passed:-

ORDER

- i) Application is rejected.
- ii) Applicant can renew his request to release him on bail if CA report is not received within three months.
- iii) Application stands disposed of.

(M. G. SEWLIKAR)
Judge