

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

918 BAIL APPLICATION NO.1406 OF 2021

VISHAL DADA SHINGTE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. More Abhijit S.
Mr. VM Kagane, APP for Respondent-State;
Mr. SJ Salunke, Adv. For Resp.No.2

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 9th December, 2021

PER COURT :-

1. Present application has been filed under Section 439 of Cr.P.C. The applicant has been arrested by Paranda Police Station in connection with CR No.336/2021, for the offences punishable under Sections 354, 354-C, 504, 506 of IPC and under Section 66(E) and 67(B) of the InformationTechnology Act and under Sections 4, 8, 12 of POCSO Act.

2. Heard learned Advocates and learned APP appearing for the respective parties.

3. It has been vehemently submitted on behalf of the applicant, after giving prosecution

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story, that in fact, the FIR itself would make it clear that there was a proposal for marriage floated from the family of the applicant for the victim, who is daughter of the informant. But, then the informant states that he refused the proposal on the count that he will not think about the marriage of his daughter for about 3 to 4 years. But, then he states that he was informed by his brother-in-law at about 8.00 pm on 8.10.2021 that he had seen status on Whatsapp of the applicant, which was depicting some obscene photograph of the applicant and the victim. He made enquiry with the girl and then came to know that the applicant had misbehaved with her about eight days prior to that day and had threatened her to defame her, if she discloses it to anybody. Thereafter, the informant and others went to the house of applicant and asked him about the act done by him and the photograph that has been kept on the whatsapp status, they received threats from the applicant. The applicant is aged 23, and since the talks about marriage were started, it appears to be act between the applicant and the victim with consent of each other. Now, almost entire evidence

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has been collected. The applicant is behind the bars since 9th October, 2021. He is ready to abide by the terms of the bail.

4. Learned APP as well as learned Advocate appearing for Respondent No.2 – informant, strongly opposed the application and submitted that the applicant cannot presume the consent of the girl, who is minor. Further, as per the statement of the girl, she had not consented and it was, in fact, a forcible act on the part of the applicant. Due to the threats given by the applicant, she had not disclosed it to anybody. But, then by keeping that photograph on Whatsapp status, the girl has been defamed and her family too. Such acts will have to be condemned. Only age will not be sufficient factor to be considered.

. The learned APP, made alternative submission and by referring to decision of High Court of Himachal Pradesh, Shimla in the case of **Akshay Kumar Vs. State of H.P.** (Cr.MP(M) No.865 of 2021, dated 31st May, 2021, submitted that, as the applicant seems to be a technosavy, one of the

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conditions imposed on the accused in that case, be imposed on the present applicant in this case.

5. Before turning to the other aspects involved, taking into consideration the contents of the FIR, it can be seen that Section 66-E of The Information Technology Act, 2000, will not get attracted in this case. The said section prescribes punishment for violation of privacy. It specifically provides that whoever, intentionally or knowingly captures publishes or transmits the image of a private area or any prson without his or her consent, then punishment has been prescribed. Explanation-(c) to the Section defines the word "private area", which means, "the nacked or undergarment clad genitals, pubic area, buttocks or female breast."

. Secondly, the facts of the case are also not stating that there was any penetrative sexual assault on the girl, which has been defined under Section 3 and made punishable under Section 4 of POCSO Act. For Section 12 of the POCSO Act, which prescribed for punishment for sexual harassment, we will have to consider definition contained in

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Section 11 thereof and taking into consideration the acts stated therein, it cannot be said that the present case is covered under Section 11 of POCSO Act. Therefore, prima facie, offences under Section 66-E of the Information Technology Act; Sections 4 and 12 of POCSO Act, are not made out.

6. As regards the other offences are concerned, as aforesaid, the act, which has been stated, of which photograph was taken with the applicant, was taking kiss of the girl and then it is stated that such photograph has been kept on the whatsapp status. According to the girl, it was a forcible act on the part of the applicant. Even if now the evidence under other offences might be transpiring, it is to be noted that the applicant is behind the bars since 9.10.2021. Further, the mobile phone of the applicant has been seized; statements are also recorded and the condition pointed out by the learned APP in the aforesaid citation deserves to be imposed on the applicant in the facts and circumstances of the present case. Under such circumstance, by imposing stringent

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conditions the application deserves to be allowed.

Hence, following order, -

ORDER

i. The application stands allowed;

ii. The applicant be released on bail in connection with CR No.336/2021, for the offences punishable under Sections 354, 354-C, 504, 506 of IPC and under Section 66(E) and 67(B) of the InformationTechnology Act and under Sections 4, 8, 12 of POCSO Act on PR bond of Rs.30,000/-(Rupees thirty thousand) with two solvent sureties of Rs.15,000/- each;

iii. The applicant shall, within thirty days of his release from the prison, procure a smartphone, and inform its IMEI number and other details to the Investigating Officer. He shall keep the phone location/GPS always on the "ON" mode. Before replacing his mobile phone, he shall produce the existing phone to the Investigating Officer and give details of the new phone. Whenever the Investigating Officer asks him to share his location, then he shall immediately do it. He shall not clear the location history nor format his phone without prior permission of the concerned IO.

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iv. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

V. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV