

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 719 OF 2021

Jayraj Kantilal Oza ... Applicant
Versus
The State of Maharashtra ... Respondent

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Ms. Anjali Patil, Advocate for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 10th MARCH, 2021

PER COURT:

1. This is an application for bail in C.R. No.89 of 2019 registered with Kasturaba Marg Police Station, Mumbai for offences punishable under Sections 376(D), 377 & 120-B r/w Section 34 of Indian Penal Code (for short “IPC”) and Section 66(E) of Information Technology Act, 2000. The applicant was arrested on 18th June, 2019.

2. The First Information Report (For short “FIR”) was lodged on 23rd February, 2019. It is alleged that the complainant was married with accused No.1 Vishal Hiremath on 3rd December, 2009. The complainant’s husband is working in Merchant Navy. Since 6th September, 2015, the complainant and her husband were residing at Borivali. It is further alleged that, when her husband had returned

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Manish S. Thatte
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from ship, one couple visited their house. All of them consumed liquor. The friend of her husband sexually assaulted her. On the next day the complainant's husband informed her that he had recorded the video of the act and he had called that person for having sex with the complainant. Similar incident had occurred thereafter. Her husband called one person at home. He was told to have physical relationship with complainant. The accused No.1 threatened the complainant that objectionable video would be made viral. She acted as per his wishes. Her husband sexually abused her and committed unnatural sex. On 14th August, 2016 one couple was called at home by accused No.1. She was forced to do similar act. On 7th October, 2018 one person was called for massage. The said person was told to massage the complainant. She refused. Since the accused had threatened her she succumbed to the demand. Her husband had opened false Facebook and Whats app account. He also threatened her that no action could be taken against him due to her demeanour in the video. The accused No.1 had uploaded objectionable photo and then deleted them. During investigation the applicant and other accused were arrested.

3. Learned advocate for the applicant submitted that, there is inordinate delay in lodging the FIR. There is no explanation for the delay. The offence under Section 376 cannot be applied to the

applicant.

4. Learned APP submitted that the victim was forced to indulge into sexual relationship by her husband with other persons. She was threatened. The accused had recorded video recording. The applicant is identified by complainant. There is Whats-app conversation between, applicant and co-accused Hitesh Parat.

5. On perusal of the papers, it is apparent that, the marriage between the complainant and accused No.1 was performed in 2009. In 2015 they started residing separately at Borivali. The date of first and second incident has not been mentioned in the FIR. The alleged incidents occurred in 2015 and thereafter in 2016 & 2018. The FIR was lodged on 23rd February, 2019. The complaint was lodged belatedly. The statement of one witness Dhaval Narendra Kothari mentions that the accused No.1 had made video call to him. His wife was also with him. Accused No.1 told him that he can see the video of accused No.1 and his wife having sexual relationship. The witness refused to watch the video. The accused No.1 and his wife were seen smiling.

6. The prosecution is relying upon the conversation between the applicant and co-accused Hitesh Parate which is part of charge-sheet. Wherein there is discussion about the relationship with

the victim. Hitesh Parate has been granted bail by this Court vide order dated 21st December, 2020. The husband of the complainant is granted bail by this Court vide Bail Application (st.) No.2432 of 2020 vide order dated 4th March, 2021. The applicant is in custody from 5th June, 2019. Hence, Further custody is not necessary. I pass the following order:

ORDER

- (i) Criminal Bail Application No. 719 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.89 of 2019 registered with Kasturaba Marg Police Station, Mumbai on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks in lieu of surety.
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)