

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

**ANTICIPATORY BAIL APPLICATION NO.559 OF 2020
WITH
INTERIM APPLICATION NO.359 OF 2021**

Nikita Hemlani	.. Applicant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Mr.Akshay Jadhav, Advocate for the Applicant.

Ms.Shivani Soni i/b. Mr.Rakesh K. Singh, Advocate for the Intervenor.

Mr.Y.M. Nakhwa, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 12, 2021.

P.C. :

The applicant is apprehending arrest in connection with C.R.No.20 of 2020, registered with Varsova Police Station, Mumbai, for the offences punishable under Sections 323, 324, 504, 506, 376 and 377 read with 34 of Indian Penal Code ("IPC", for short). First Information Report ("FIR", for short) was registered on 15th January, 2020.

2 The case of the complainant is that she is aged around 30 years. She is from State of Assam. She completed her

graduation. In January 2019, she went to Bangalore. She downloaded the App from internet MOOVZ LGBT. She got acquainted with the applicant who was a model from Rajasthan and aged about 26 years. In February 2018, the complainant came to Mumbai as her grandmother was ill and admitted in Kokilaben Dhirubhai Ambani Hospital, Mumbai. She met the applicant at Andheri. Thereafter the applicant repeatedly represented that she is in love with the complainant and she wants to meet her. At the request of the applicant, the complainant went to Goa. At the request of the applicant, the complainant visited Mumbai in July 2018. Applicant made arrangement for stay of the complainant at Andheri, Oshiwara and Kandivali. In August 2018, both of them hired a flat at Andheri (West). There was consensual sexual relationship between them. The applicant was aggressive. On protest by the complainant, she was assaulted by the applicant. The relationship of the applicant with the complainant was not known to her family. She was apprehensive that the relationship could not be known to her family and other persons. The complainant was assaulted by the applicant. The mother of complainant noticed injuries on her person. She did not disclose her relationship with the applicant to her mother. She was repeatedly abused and

assaulted by the applicant. In November 2018, the complainant was assaulted. She took medical treatment. Somewhere in November 2018, the applicant brought her friend to the room occupied by them. Both of them had consumed liquor. The complainant was sleeping on her bed. The friend of the applicant slept next to the complainant and sexually assaulted her by fingering. The applicant instigated him that he should rape the complainant. The complainant managed to relieve herself. Both of them abused the complainant. The applicant apologized. Even thereafter the applicant had assaulted her. The applicant was possessive about her. The applicant retained her belongings. She left the company of the applicant. She lodged the FIR.

3 Supplementary statement of the complainant was recorded on 25th January, 2020. Complainant improvised her version. She stated that in July - August 2019, the applicant was forcing her to have sexual relationship. She had opposed the same. The applicant assaulted her. She was subject to sexual harassment. She was subjected to unnatural sex.

4 The co-accused Manish Sharma had preferred application for Anticipatory Bail before this Court. The said application was allowed by order dated 11th March, 2020. The

complainant has alleged the commission of offence under Section 376 of IPC against him. While allowing the said application, it was observed that accused no.1 and the complainant were residing together. Accused no.2 had allegedly sexually assaulted complainant in November 2018. There is delay in lodging FIR.

5 Applicant had preferred an application for anticipatory bail before the Sessions Court. The said application was rejected by order dated 25th February, 2020.

6 Learned advocate for the applicant submitted that the allegations in the FIR are false. There is delay in lodging the FIR. Applicant and the complainant came in contact with each other in 2018 through MOOVZ LGBT Dating App. Both of them met. They stayed together. There is consensual sexual relationship between them. This fact is admitted by the complainant in her FIR. The allegation of assault are false. The complainant and her mother had admitted that the complainant can harm herself if the relationship is broken with her. The said fact is evident from the WhatsApp chat screen shots between the complainant and the applicant and the mother of the complainant. The WhatsApp chats are annexed to the application. The complainant had become possessive. This is evident from the WhatsApp chat

conversation annexed to the application. The complainant has improvised her version in supplementary statement. Section 377 is not attracted in this case. Section 376 was attributed to the co-accused.

7 Learned APP submitted that the allegations against the applicant are of serious nature. Complainant was subjected to sexual assault. She was subjected to unnatural sexual offences. The complainant was abused and assaulted. The statement, FIR and supplementary statement attributes role to the applicant. She is not entitled for anticipatory bail.

8 Learned advocate for the complainant opposed the application for anticipatory bail. It is submitted that the complainant was subjected to sexual assault. Accused have assaulted the complainant on several occasions. She committed unnatural act. Supplementary statement of the complainant was recorded when she was given courage after her examination in Cooper hospital. The offence is of serious nature. Complainant was physically and mentally tortured. On 11th February, 2020, the complainant has forwarded a complaint to senior inspector of police Varsova Police Station, Mumbai, stating that the accused are trying to threaten her witnesses and family. Her brother had

received a phone call from unknown lady warning him not to help the complainant. The application may be rejected.

9 On perusal of FIR, statement dated 15th January, 2020, it is apparent that the applicant and the complainant are major. They got acquainted with each other in 2018 through MOOVZ LGBT dating App. Apparently, both of them were interested in relationship. The victim went to Goa and met the applicant. She came to Mumbai and both of them stayed together. FIR further mentions that they had consensual sexual relationship. They were into relationship from 2018. FIR was lodged in January 2019. Complainant has also alleged that she was assaulted and abused by the applicant. The co-accused to whom allegations of sexual assault were attributed in the complaint has been granted anticipatory bail. The allegation about unnatural offence was reflected in the supplementary statement recorded on 25th January, 2020. The said allegations were absent in the FIR. The WhatsApp chat between the complainant and the applicant would indicate that the relationship was consensual. Subsequently, there were differences. Assuming the allegations to be true, it is apparent that both of them were in consensual relationship. The applicant need not be subjected to custodial interrogation.

10 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.559 of 2020, is allowed;
- (ii) In the event of arrest of the applicant in connection with C.R.No.20 of 2020, registered with Versova Police Station, Mumbai, the applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more local sureties in the like amount;
- (iii) Applicant shall not tamper with the evidence;
- (iv) Applicant shall not approach the Complainant;
- (v) Applicant shall co-operate with the investigation by attending the investigating officer, as and when called for;
- (vi) Anticipatory Bail Application No.559 of 2020, stands disposed of accordingly;

(viii) Interim Application No.359 of 2021, stands disposed of.

(PRAKASH D. NAIK, J.)