

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.865 OF 2020
ALONGWITH
INTERIM APPLICATION NO.30 OF 2021**

Mujahid Bhauddin Kapoor

.. Applicant

Vs.

The State Of Maharashtra & Anr.

.. Respondents

Mr. Arun K. Rajput i/b Ms. Anjali Patil, Advocate for Applicant in BA.

Mr. Aarif Ali M. Ali, Advocate for Applicant in IA.

Mrs. Anamika Malhotra, A.P.P. for the State-Respondent.

PSI Rupanvar, Byculla Police Station, Mumbai, Present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th MARCH, 2021

PC.

1. The Applicant is arrested on 18th October 2019 in C.R. No. 317 of 2019 registered with Byculla Police Station, Mumbai for the offence punishable under Sections 376, 376 (2) (n), 384, 500, 506 read with Section 34 of the Indian Penal Code (for short "IPC") and Section 3, 4, 8, 12, 14 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 67-A and 67-B of Information Technology Act, 2000.

2. The First Information Report (for short "FIR") was lodged on 16th October 2019 by the mother of victim. According to complainant on 10th October 2019 the brother-in-law of the complainant had received the

video clip on whatsapp of his mobile phone. He showed the clip to the complainant and her husband. The video recording showed complainant's daughter having sexual relationship with one boy. The complainant made inquiry with the victim. She disclosed that she was in love with the applicant since May 2018. She further disclosed that in August 2018 the applicant took her to room premises at Dockyard Mazgaon. The applicant told her that he is going to marry her and established physical relation with her. He told her not to disclose the incident to anyone. Hence, she did not disclose about it to any person. In October 2018 to March 2019 the applicant under the promise of marriage had sexual relationship with the victim on several occasions at the aforesaid premises. In April 2019, the applicant accused again took the victim to the said premises and while having sexual relationship, the friend of the applicant Nasir had recorded the video by mobile phone. The victim noticed it. She told Nasir to delete the video for which he demanded Rs. 30,000/- or sexual relationship with him. He threatened that he would make the video viral. In May 2019 the victim met the applicant and asked him as to where he is going to marry her. At that time the applicant told her that he is going to perform marriage with another girl at his village and she should not contact him. He threatened the victim that she will be killed. Hence, she did not disclose the incidents to anyone.

The age of the applicant was 19 years whereas the victim was aged around 16 years.

3. At the time of arrest of applicant his personal search resulted in seizure of mobile phone bearing Jio Sim Card and Vodafone Sim Card. Panchnama was recorded on 18th October 2019. Panchnama dated 24th October 2019 mentions that video clip received from witness was viewed and it was noticed that the victim and accused were having sexual relationship and thereafter they were seen hiding their faces.

4. Learned counsel for the applicant submitted that the applicant had never refused to marry the victim girl. Both of them were in love with each other. Family members of victim were against the marriage. The applicant is aged about 19 years. The cellphone of the applicant was seized during the investigation. Further detention of the applicant is not necessary. Nothing incriminating was found in his cellphone. The role of video recording is attributed to another person. There are no criminal antecedents against the applicant. The relationship if any, was of consensual nature.

5. Learned APP submitted that the victim was minor. She was subjected to physical relationship under the pretext of marriage. The video recording was forwarded to various witnesses. The brother-in-law of the complainant had received the video recording of the victim about accused having physical relationship with victim. Under the false promise of marriage, the victim who was minor was subjected to sexual assault.

6. Learned advocate for the intervenor/complainant/victim submitted that the victim was minor at the time of incident. Her consent is immaterial. The accused had made false promise of marriage and subjected her to sexual assault. Video recording regarding sex was made viral by accused. On the day of rejection of application for bail, the brother of applicant had threatened relative of victim and N.C. complaint was registered under Section 504, 506 of IPC on 28th January 2020. Bail should not be granted to the applicant. He relied upon order passed by this Court in Bail Application (st.) No.1648 of 2020 dated 2nd September 2020 wherein bail was refused to accused. He also relied on order dated 28th July 2020 passed by this Court in Bail Application No.126 of 2020. It is submitted that the accused therein was denied bail in similar circumstances.

7. The statement of victim was recorded under Section 161 of Cr.P.C. on 20th October 2019. She stated that, she was in love with applicant. He promised marriage. There was physical relationship between them. In April 2019, Nasir recorded video of complainant and applicant. He demanded money for deleting video. Thereafter Nasir repeatedly demanded money and sexual favour and threatened of making video viral. The Statements of the victim was recorded under Section 164 of Cr.P.C. before the Metropolitan Magistrate on 4th December 2019. In the said statement she has given her age of 17 years. She stated that the applicant had forceful sexual relationship with her. She was threatened. The applicant used to consume drugs. He recorded video and made it viral. He defamed the victim. Her family members came to know about it and thereafter complaint was lodged. The version of the victim under Section 164 of Cr.P.C. is contrary to what she had disclosed to her mother when the complaint was lodged against the applicant and statement dated 20th October 2019. In the statement under Section 164 of Cr.P.C. she has not disclosed the date of incident. The FIR and victim's statement under Section 161 of Cr.P.C. attribute role of recording video to another person. The FIR and also disclosed alleges that there was physical relationship between victim and applicant on several occasions. They were in love with each other. There

was promised of marriage. Applicant is in custody from 18th October 2019. Considering these aspect further detention of the applicant is not necessary and case for grant of bail is made out.

ORDER

- (i) Bail Application No.865 of 2020, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.317 of 2019, registered with Byculla Police Station, Mumbai, on executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) Applicant shall report concerned police station once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., for a period of six months and thereafter once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m.;
- (iv) Applicant shall not tamper with the prosecution evidence;
- (v) Applicant shall not approach the complainant or any other witnesses;
- (vi) Bail Application No.865 of 2020, stands disposed of.
- (vii) Interim Application No.30 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)