

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1212 OF 2021

Fayaz Ahmad Siraj Shaikh	Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Arun Rajput, Advocate for the Applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : SURENDRA P. TAVADE, J.

DATE : 10th MAY, 2021.

P. C. :

1. This is an application for bail under Section 430 of Cr.P.C. The applicant came to be arrested on 29.09.2020 in connection with C.R.No.732 of 2020 registered with Dindoshi Police Station for the offences punishable under Sections 376(2)(n), 354, 354(d), 506(ii) r/w.34 of Indian Penal Code, 1860 (IPC) and Section 66(E) of the Information Technology Act.

2. It is the case of the prosecution that the informant is a married woman. She resides alongwith her husband on rental basis at Malad, Mumbai. The applicant used to follow and threaten her. One day, the applicant gave a chit to the informant, wherein the cell number of the applicant was written. The applicant was asked her to call on his mobile number. He called her home. She visited the house of the applicant. He showed her knife and bottle of acid and threatened her. He had forcibly

sexual intercourse with her, but she did not shout due to the fear. She left the place. Thereafter, the applicant started calling her to his house and used to have a physical relations with her. The relationship was continued for two and half years.

3. It is contended that in the year 2019-20, friend of the applicant Nadeem approached the informant and called her in his house. The informant went to the house of Nadeem. He showed her video clip therein the informant was seen in physical relations with the applicant. It is alleged that Nadeem threatened the informant that he would make her video clip viral and asked to keep physical relations with him. Accordingly, the informant succumbed to the pressure and had a sexual relations with Nadeem. The said relations was continued for about a year.

4. It is alleged that Nadeem introduced third accused Sadiq Patel to the informant. He also demanded sexual relations to the informant. One day, the informant noticed third accused Sadiq Patel, who is known to her. Sadiq Patel asked her to keep physical relations with him and threatened her that he would disclose it to her family. He gave her cell number. She met him. Accordingly, she was subjected to molestation. It is alleged that on 15.06.2020 Nadeem called and insisted her that she should meet him. She was talking to him in low voice, which was heard by her husband. Her husband suspected the conduct of the informant. Hence, her husband made enquiry about it with the informant, she disclosed the incidents to her husband. Thereafter, FIR came to be registered on 29.09.2020.

5. It is contended that co-accused Nadeem Shailkh is released on

bail by this Court. The allegations against the present applicant and Nadeem are similar in nature. Therefore, the applicant prays for bail on parity. It is contended that the applicant is in custody since long. The investigation is over. There is no possibility of tempering or threatening the informant. It is contended that the applicant would abide by the conditions imposed on him if he released on bail. It is contended that the informant had a physical relations with many persons. Similarly, the informant had a consensual relationship with the present applicant also. Therefore, it is contended that the applicant be released on bail.

6. The learned APP for the State submitted that the allegations against the applicant and the other accused-person namely Nadeem, who is released on bail are not similar in nature. Therefore, it is submitted that the applicant is the person who had threatened the informant and on the point of knife had been a sexual intercourse with the informant. It is contended that the applicant used to blackmail the informant and pressurize her to have a sexual relations with him. The applicant threatened the informant that he would make video clip viral wherein the informant was seen in physical relations with the applicant. Hence, application for bail be rejected.

7. Heard learned counsel for the applicant and learned APP for the State. Perused the FIR.

8. It appears from the FIR that the applicant came in contact with the informant in the year 2019-20. Thereafter, till lodging of the FIR, the applicant had a sexual relations with the informant. Therefore, it can be said that this was consensual sexual relationship between them. The

Investigating Officer has seized the CDR of the cellphone of the applicant. It reveals that in all 111 call were recorded in CDR, out of that applicant made only 18 calls. It shows that the informant had a sexual relations with the applicant with consent.

9. The learned counsel for the applicant invited my attention to the statement of one Inayat Sayyad. On perusal of the said statement, it appears that the informant used to call him and used to insist him to have sexual relations with her. She had also contacted said witness on cellphone on many occasions. The informant also gave names of 2-3 persons with whom she had sexual relations. No doubt, she alleged that the said two persons were also raped her, but no complaint was lodged by her.

10. This Court has enlarged the co-accused Nadeem on bail, wherein it is observed that the first incident had occurred in the year 2018 and FIR came registered in the year 2020. From about 2 ½ years the informant did not lodge any complaint against the applicant. She was having sexual intercourse with the applicant and co-accused. It appears that the FIR came to be registered when the husband of the informant suspected the conduct of the informant. There are several calls exchanged between the informant and the applicant as well as co-accused. The said call history shows that the informant was calling the applicant as well as the co-accused.

11. It was alleged by the informant that she was shown video clip by the co-accused, but the said video clip was not seized by the Investigating Officer. The cellphone of the applicant as well as the co-accused are sent to

Forensic Lab. The report of Forensic Lab is not received. Almost eight months have passed, but there is no report received from the Forensic Lab. The applicant is in jail since last more than seven months. The co-accused is ordered to be released on bail. The case of the present applicant and the co-accused is almost similar in nature. Therefore, the applicant is entitled to be released on bail.

12. Hence, I pass the following order.

ORDER

- (i) Criminal Bail Application is allowed and disposed of.
- (ii) In the event of arrest of the applicant in connection with C.R.No.732 of 2020 registered with Dindoshi Police Station, the applicant be released on bail on his executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall not tamper with the informant whatsoever manner;
- (iv) The applicant is directed to attend the hearing of the case regularly in the trial Court.
- (v) The applicant is directed not to leave Mumbai without prior permission of this Court.

[SURENDRA P. TAVADE, J.]