

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

BAIL APPLICATION NO.1306 OF 2021

Agilesh Gangadharan Kappukullumal

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Rajiv Patil, senior Advocate with Mr. S.P. Wakode i/b. Mr. Vishal L. Kolekar for the Applicant.

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

CORAM : SARANG V. KOTWAL, J.

DATED: 28th SEPTEMBER, 2021.

P.C.:-

1. The Applicant had earlier approached this Court for his release on bail in connection with C.R. No.178 of 2020 registered at Powai police station under Section 376 of the Indian Penal Code (for short 'IPC'). The Applicant was arrested on 20/03/2020. The FIR was lodged on 20/03/2020 itself.

2. Heard Shri. Rajiv Patil, Senior Advocate for the Applicant and Shri Nakhwa, learned APP for the State.

3. On the earlier occasion by reasoned order dated 25/09/2020 the Applicant's bail application was rejected. The reasons were

mentioned in paragraph 6 of the order. It was specifically observed that neither in the FIR nor in the supplementary statement of prosecutrix there was any reference that the Applicant or anybody else had made her aware of his marital status. It was observed that because of the misconception of facts, her consent was vitiated. The application was rejected with these observations.

4. The Applicant has again approached this Court. The changed circumstance pleaded is that the statement of the Applicant's wife was recorded on 02/10/2020 wherein she had stated that when in August, 2019 the informant had accompanied the accused, at that time his wife had also been to that resort and at that time she was introduced to the informant as the Applicant's wife. The contention therefore is that the informant was aware of the Applicant's marital status.

5. I have considered this submission. It is very surprising that after the High Court had rejected the application of the Applicant by a reasoned order on 25/09/2020 this statement came to be recorded on 02/10/2020. No explanation is offered by the Investigating Officer why it was recorded subsequent to the passing of that order. It forms part of the supplementary charge sheet.

6. Apart from her statement there is statement of one Sumit

Surendra Singh, which is recorded on 02/10/2020. It mentioned that on one occasion the informant had asked this witness whether he was aware that the Applicant was married. This question was asked after their affair had developed. At that time this witness had told the prosecutrix/informant that he was not aware of the same. Thereafter he had asked the Applicant as to whether he was married. Then the Applicant had told him that he was married and had one daughter. This witness had asked the Applicant as to why he had cheated the informant. At that time the Applicant had not given any reply. Thus, the statement of this witness -Sumit Singh supports the informant's case that she was not aware of the Applicant's marital status and her consent was taken by the Applicant through deception. Therefore, I do not see any reason to take a different view than the view which was taken in the order dated 25/09/2020. The application is therefore rejected.

7. However, I am inclined to expedite the trial in time bound manner. The Applicant is in custody since March 2020, he has a young daughter and there are only a few witnesses. The trial can get over soon once it starts. The trial judge is therefore requested to complete the trial within four months from today.

(SARANG V. KOTWAL, J.)