

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1439 OF 2021

Shalmon @ Vikki Pradeep Shinde .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Sana Khan i/b Hulyalkar & Associates for the Applicant.

Ms. P.N. Dabholkar, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 26TH JULY, 2021.

P.C:-

1. The Applicant, a young boy, aged 20 years, is charge-sheeted and being tried in Sessions Case No.32 of 2020 by the Sessions Court, Khed. The FIR, in which he is charge-sheeted came to be registered with Chakkan Police Station, Dist. Khed vide No.1125 of 2017 on a complaint filed by the prosecutrix on 08/11/2017. On the basis of the said complaint, he was arraigned as an accused and subsequently charged for the offence punishable under Section 376, 384 and 506 of the IPC.

The period of alleged offence is reported to be from 01/12/2016 and 24/03/2017. The Applicant came to be arrested in connection with the said C.R. on 13/11/2019 and, since then, he is incarcerated.

2. The prosecutrix alleges that prior to one year of reporting, she was residing in the given address with her husband and two children and since her minor son was kidnapped and later on found, they shifted to a place in Thane. The complaint is lodged in respect of an incident, which took place somewhere in December, 2016, when she had approached a shop for recharge of her mobile phone, where she came across the Applicant, who obtained her number and contacted her on her mobile phone. He also started forwarding messages, but the prosecutrix states that she did not report about this matter to anyone since she was scared. In order to make him understand the consequences of the act, it is alleged by her that, she invited him to her residence and apprised him that she is married and having two children and, therefore, he should stop sending messages or calling her. After two days, when her husband was out for night shift, it is alleged that the Applicant entered her house and expressed his liking towards her and threatened her that if she does not accede to his request, he will call her husband and inform him that she had invited him to her residence. Thereafter, it is alleged that he offered her a *pan*, on consumption of which, she became unconscious and when she regained her consciousness, she

realized that she has been raped and he left the house. At 11.00 in the night, the Applicant is alleged to have made a phone call to her and informed her that he had recorded the act of sexual intercourse in his mobile phone and if she does not accede to his requests, he would forward the video clippings to her husband. Thereafter, it is alleged that he used to enter her house and establish physical relationship with her, but he did not show her the video clippings. It is further alleged that he started demanding money and that she used to borrow money and arrange for the same. Being fed up with the harassment, she approached the police station and lodged a complaint on 08/11/2017. In her supplementary statement, which is shown to be recorded on 18/09/2017, which appears to be a typing mistake as the supplementary statement has to follow her main complaint, which was recorded on 08/11/2017, she gave the details of the amounts, which she had paid to the Applicant and alleged that she had parted with huge amounts. This resulted in registration of FIR and, on investigation, the charge-sheet came to be filed.

3. Learned A.P.P. is specifically asked as to whether there is any material contained in the charge-sheet to establish the financial dealings and whether such amounts have been paid by the prosecutrix in favour of the Applicant, she concedes to the fact that there is no such material in the charge-sheet barring a statement of one boy, whose statement was recorded on

06/01/2018, and who has stated that the Applicant used to chitchat with him and, one day, he sent him to a beauty parlor for collecting money from one lady. When he approached the lady, she gave a *chit* and some money and asked him to tell the Applicant to '*put the balance*'. The statement cannot be stated to be incriminatory since it does not speak of how much was the amount. Rather on a plain reading, it reflects that the amount was given for the purpose of recharge since the words used are '*balance takala*'. The said witness, however, states that he did not know who the lady is nor she was subjected to Test Identification Parade. On being asked, whether the mobile phone, in which the alleged recording is stored has been seized and forwarded for forensic analysis, learned A.P.P. states that no such seizure has been effected, the consequence being there is no material compiled in the charge-sheet about the alleged video clipping on the pretext of which he forced the prosecutrix to establish physical relationship. Such evidence is conspicuously absent in the charge-sheet. The prosecutrix was subjected for medical examination, but the medical report does not support the case of the prosecution since it records that there is no evidence of sexual assault, at present. Moreover, the prosecutrix is a married lady and when she reports the incident at much later point of time, the evidence of sexual assault can rarely be found.

4. Taking an overall view of the material compiled in the charge-sheet, the prosecution has not brought any material on

record, which would compel the further detention of the Applicant though the investigation is complete and the charge-sheet is filed. *Prima facie*, it can be seen that there is unexplained delay in lodging the FIR though the prosecutrix may explain the delay and it may not be fatal to the prosecution. However, at this stage, the Applicant cannot be kept incarcerated since more than two years have lapsed since his arrest. Needless to state that observation are *prima facie* in nature and only restricted to the decision of the bail application. The Applicant is, therefore, entitled to the following order:

ORDER

- (a) The Applicant – **Shalmon @ Vikki Pradeep Shinde**, shall be released on bail in C.R. No.1125 of 2017 registered with Chakkan Police Station, District Khed on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall attend to the Chakkan Police Station, Khed, on first Monday of every month between 10.00 a.m. and 1.00 p.m. till the charge is framed and thereafter as per the direction of the trial court.

(d) The Applicant shall, in no way, try to contact the prosecutrix.

5. The Application is allowed in the aforestated terms.

6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]