

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

CRIMINAL BAIL APPLICATION NO. 1563 OF 2021

Nadeem Asad Shaikh	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. Arun Rajput i/b. Ms. Shabnam Shaikh, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th APRIL, 2021.

PC :

1. This is an application for bail under Section 439 of Cr.PC. The applicant is arrested on 13th October, 2020. The First Information Report (FIR) was registered on 28th September, 2020, with Dindoshi Police Station, Mumbai vide C.R. No. 732 of 2020, 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 Information Technology Act.

2. The complainant/ victim is aged around 22 years. She is a married lady. Her marriage was performed in 2013. They hired premises on rental basis at Malad, Mumbai from 2016 to 2020. She stayed at various places alongwith her husband on rental basis. From February, 2020, she was residing at Malad(E), Mumbai. She was

confronted by one boy named Faiyaaz. He told her that he wants to have friendship with her. He used to follow her. He continued to harass her. She did not respond. One day he handed over a chit to the complainant and told her to give him call with the promise that he would stop harassing her. On the next day, the complainant gave call to Faiyaaz on the cellphone number given by him. He called her home. The complainant visited the place indicated by Faiyaaz. He took her inside the premises. No one was in the house. He showed her knife and bottle of acid. He threatened her. He had forceful sexual intercourse with her. She did not shout due to fear. He showed the video recorded by him. She left the place. She did not inform about the incident to anyone. Thereafter, Faiyaaz used to call her home. Under the fear of making the video viral, the victim used to visit the house of said accused. There was physical relationship between them. The relationship continued for two and half years. There was physical relationship between them on several occasions. Under the pretext of going to visit doctor, the complainant used to leave the house. After about one year, friend of Faiyaaz approached the complainant. He told her, he likes her. He called her home. She visited the house and he showed her video of physical relationship between victim and co-accused Faiyaaz. He threatened that he would make the video viral. Thereafter, the said accused Nadeem

(applicant) called the victim to the house of his relative. She was subjected to sexual intercourse. Under the threats, the accused induced her to have physical relationship with her for period of seven to eight months. The victim did not disclose these incidents to anyone. One day, the complainant was noticed by third accused Sadiq Patel, who is known to her. He questioned whether she is in relationship with the co-accused and threatened her that he would disclose it to her family. Sadiq gave her cellphone number. She met him. She was subjected to molestation. On 15th June, 2020 Nadeem called her and he was insisting that she should meet him. She was talking to him in low voice, which was heard by her husband. Her husband took her cellphone and spoke with Nadeem. He suspected conduct of the victim. Thereafter, her husband kept on enquiring about it with victim. She disclosed the incidents to her husband. Thereafter, FIR was registered on 28th September, 2020.

3. The applicant and co-accused were arrested. Co-accused Sidiq Patel to whom the overtact of outraging modesty was attributed, was granted bail by the Sessions Court vide Order dated 2nd November, 2020. The applicant preferred an application for bail before the Sessions Court, which was rejected.

4. Learned counsel for the applicant submitted that,

assuming the allegations are to be true, the relationship was of consensual nature. The FIR was lodged only after the husband of the complainant confronted about her relationship with accused. There is delay in lodging FIR. The complainant did not disclose the incident to anyone. The case of the complainant is that she was threatened that the video clip recorded by the accused would be made viral. However, during investigation, the investigating officer did not find any video clip in the cellphone of the applicant. The CDR of the accused and the victim were collected during investigation, which revealed that the complainant had made several calls to the accused. The allegations are afterthought. There were 111 calls between the applicant and the victim, during the period from 10th March, 2020 to 25th June, 2020. Out of them, 9 calls were made by the applicant and 99 calls were made by the victim. The Sessions Court rejected the bail on the ground that, FSL report is awaited. The applicant is in custody from the date of arrest. Since nothing objectionable found in the cellphone, only for the purpose of FSL report, the applicant need not be detained in custody for indefinite period.

5. Learned APP submitted that victim was subjected to sexual assault by the applicant and co-accused. She was threatened that the video recorded by accused No. 1 would be made viral. She was subjected to sexual intercourse under coercion.

6. On perusal of the FIR, it can be seen that the version of the complainant is that she got acquainted with accused No. 1. There was physical relationship between them for a period of two and half years. She did not lodge any complaint or disclose the incident to anyone. The FIR was lodged in 2020. Thereafter, according to complainant, she got acquainted with the applicant and for seven to eight months she was subjected to physical relationship. The FIR also indicate that in June 2020, the victim's husband suspected the conduct of the complainant, and, thereafter, the FIR was lodged. There are several calls exchanged between the victim and the co-accused. The cellphone of the applicant was seized. Nothing incriminating was found in the cellphone. The prosecution has alleged that FSL report is awaited. Considering the factual aspect of the matter, it is apparent that the relationship was of consensual nature, further detention of the applicant is not necessary.

7. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 1563 of 2021, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 732 of 2020, registered with

Dindoshi Police Station, Goregaon, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 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 1:00 p.m., till further order;
- (iv) The applicant shall not tamper with the evidence;
- (v) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.25,000/-, for a period of eight weeks, in lieu of surety;
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)