

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

BAIL APPLICATION NO.1647 OF 2021

Amey Rajesh Mestry

.. Applicant

Versus

State of Maharashtra

.. Respondent

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Mr.Prashant S. Thombre, Advocate for the Applicant.

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

PSI Mohit, Kalachowki Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : MAY 05th, 2021.

P.C. :

The applicant is arrested on 9th January, 2021, in connection with C.R.No.16 of 2021, registered with Kalachowki police station, Mumbai, for the offence punishable under Section 376 read with 34 of Indian Penal Code ("IPC", for short) read with Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act ("POCSO Act", for short).

2 The case of the prosecution is that, in September 2019, complainant had visited Khalsa College. She got acquainted with one boy Amey Mestry (Applicant). He introduced her to his

friends, Veda Bhoite was in the said group. They became friend. They used to go out together. Veda clicked photographs of the complainant/victim while she was changing her cloths. She threatened complainant that she would show her nude photographs to others. She would disclose her conduct to her parents. Veda had allegedly told her that she should fulfill demands of applicant. He was forcing her to go out with him. Applicant took the complainant to house of the Veda at Parel. He had sexual intercourse with her. At that time, Veda had allegedly clicked photographs of complainant and applicant by her cell phone. Thereafter, the Veda used to threaten the complainant by showing the photographs and inducing her to establish physical relations with applicnat. In January 2020, the Veda again threatened her and forced her to have physical relationship with her friend Alok Pawar. She was subjected to sexual assault by Alok Pawar. In February 2020, she was introduced to Shrilesh Dalvi. They became close friends. Shrilesh became friendly with Veda. The complainant questioned Shrilesh Dalvi. She was subjected sexual assault by him. Siddhesh Lad is a friend of complainant as well as Veda. In January 2020, Veda was trying to blackmail her for having relationship with Siddhesh Lad. She was taken to house of Alok by Siddhesh Lad and subjected her to

sexual assault. In November 2020, there was fight between Veda and the complainant. Veda had threatened her that she would disclose about her conduct to her parents. She disclosed this to Sumit. On 3rd January 2021, Veda had called complainant and told her that she would disclose her conduct to her boy friend Samrat Sarkar. Victim had consumed Crocin tablets and she was admitted to Nair Hospital for treatment.

3 The applicant had preferred an application for bail before the Court of Sessions. The said application was rejected by order dated 3rd April, 2021.

4 Learned advocate for the applicant submitted that the co-accused Shrilesh Santosh Dalvi has been granted bail by the Sessions Court by order dated 8th April, 2021. The other accused Veda Bhoite was granted bail by this Court on 24th March, 2021.

5 It is further submitted that the applicant has been falsely implicated by the complainant. In the FIR, the complainant has mentioned about her acquaintance with the applicant which occurred in September 2019 near Khalsa college. However, as per the history given to medical officer, she has stated that she

became friendly with the applicant via Facebook. In her statement under Section 164 of Cr.P.C., she stated that she was acquainted with the accused on Instagram. It is alleged that the applicant had sexually assaulted the victim in September 2019 at the residence of co-accused when her parents were not around. The applicant has allegedly committed similar act at the residence of another person on several occasion till January 2020. In her statement under Section 164 of Cr.P.C., it is stated that she was subjected to sexual assault by the applicant in February 2020. The contradictions creates doubt about her version. The case of the complainant is that the co-accused Veda blackmailed her on the ground that she has her nude photographs which she clicked in November 2019. Complainant, however alleges that the incident of sexual assault had occurred at the instance of the applicant in September 2019. It is alleged that the complainant had consumed tablets and hospitalised on 19th November, 2019. The complainant, however, alleges that the incident of sexual assault had occurred at the instance of the applicant in September 2019. It is alleged that the complainant had consumed tablets, and, hospitalied on 19th November, 2019. According to complainant, she consumed tablets due to mental stress on account of event organised by co-accused Ms.Veda and there was

dispute about entry passes. In the history given to the Doctors, she stated about her incomplete college project and incompetency to cope up with the studies. The victim did not state about the incident of blackmail, threats and sexual assault. There is delay in lodging the FIR. The incident had allegedly occurred in September 2019. FIR was registered on 9th January, 2021. There is delay of 15 months in lodging the FIR. The complainant has kept on changing her statements. The statements under Section 161 and 164 of Cr.P.C. are contradictory. Nothing incriminating was found in the cell phone of the applicant and the co-accused Veda Bhoite. The mobile phone of the applicant has been seized. Although it is the case of the complainant that she was blackmailed by Veda Bhoite on the basis of her nude photographs, investigation did not reveal any such photographs in possession of Veda in her cell phone. The contradictory versions of the complainant creates doubt about her complaint. The incident of 19th November, 2019, is not reflected in the medical history. As per the statement of Sumit Yadav, the applicant and complainant were in love relationship with each other, and, there was dispute between complainant and Ms.Veda for various reasons. The statements of parents of the complainant are contrary to the version of complainant. In the

supplementary statement, the complainant has stated that she was in relationship with Samrat Sarkar. There is reason to believe that complainant has concocted her version. The applicant is in custody from 9th January, 2021. He is aged about 20 years. He is a student of Bachelor of Management Studies. He has to appear for his examination. Charge - sheet is already filed on completing investigation. There are no criminal antecedents against the applicant.

4 Learned APP submitted that the version of the victim cannot be disbelieved. She has attributed role of sexual assaulted to the applicant. She was allegedly subjected to assault on several occasions. The co-accused used to blackmail the complainant on the basis of nude photograph, and, forced the victim to have sexual relationship with the applicant. The offence is of serious nature. The cell phone is forwarded to C.F.S.L. for examination. The victim was minor. She had alleged penetrative sexual assault. Medical report supports the version of victim.

5 The co-accused Veda Bhoite was granted bail by this Court vide order dated 24th march, 2021. The prosecution case is that the said accused used to threaten the victim on the basis of

nude photograph, which were allegedly in her possession to maintain physical relationship with the applicant. Considering the discrepancies in the case of the prosecution, Veda Bhoite has been granted bail by this Court. In the aforesaid order granting bail, it was observed that the mobile phone of the co-accused Veda Bhoite has been seized, but, nothing incriminating was found. Statement of father of the victim refers to obscene message sent by Samrat Sarkar about complainant on Instagram. He had blamed her for in being relationship with two persons. Sumit Yadav in his statement stated that the applicant was boyfriend of the victim. Subsequently, Sumit was boyfriend of the victim. The relationship between Veda Bhoite and complainant had strained. Shrilesh Yadav has been granted bail by the Sessions Court vide order dated 8th April, 2021. While granting bail to him, it was observed that there are no specif allegations against him that he had committed penetrative sexual assault. The allegations against him is that he had threatened the victim to keep relations with her.

6 Undisputedly, although the charge - sheet is filed, prosecution has not come out with any cogent evidence to show that the co-accused was carrying nude photographs of the complainant in her cell phone. On perusal of the documents on

record, it is apparent that there is variation in the version of the complainant. The statements recorded under Sections 161 and 164 of Cr.P.C., are contrary to each other. The complainant was aged about 17 years. In statement dated 13th January, 2021, recorded under Section 164 of Cr.P.C., she has stated that she was a friend of Veda Bhoite. In September 2019, she got acquainted with applicant. The victim was introduced to Veda Bhoite by applicant. She was also introduced to others. For 2 to 3 days, Veda had stayed with the complainant. There was quarrel between the complainant and Veda Bhoite on account of money obtained towards event fees. The victim had consumed Crocin tablets. She was admitted to hospital. Veda had visited the house of the complainant and stayed with her. Without her knowledge, she clicked photographs of victim while changing clothes. Thereafter, she threatened that she should keep relationship with applicant, Aalok and Siddhesh or else, she would make the photographs viral. She got acquainted with Shrilesh Dalvi in February 2020. They developed love relationship with each other. Shrilesh started avoiding her. He used to be in company of Veda, Aalok, Siddhesh and applicant. Shrilesh also threatened her that she should keep relationship with her. FIR was thereafter lodged belatedly. There are contradictions in the FIR, medical history

and the statement under Section 164 of Cr.P.C. There is delay in lodging FIR. The version of victim creates doubt. The entire case is based on objectionable photographs of victim on the basis of which subsequent incidents had allegedly occurred. There is no such evidence on record. For want of FSL report, applicant cannot be detained in custody for indefinite period. The applicant is the student aged about 20 years, further detention of the applicant is not necessary.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1645 of 2021, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No16 of 2021, registered with Kalachowki 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 is permitted to furnish provisional cash bail in the sum of Rs.25,000/-, for a period of eight weeks, in lieu of surety;

- (iv) Applicant shall attend trial Court on the date of hearing regularly, unless exempted by the Court;
- (v) Applicant shall not tamper with the prosecution witnesses;
- (vi) Applicant shall report concerned police station once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (vii) Bail Application No.1647 of 2021, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)