

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1693 OF 2020**

Santoshkumar Malikarjun Swami .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

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Mr.Kuldeep U. Nikam for the applicant.
Mrs.A.A. Takalkar, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 7th JULY 2021**

P.C:-

1 The applicant is charge-sheeted for the offence punishable under Section 376, 323, 504 of the IPC in connection with a C.R.No.609/2019 registered with Sinhagad police station in the year 2019. He seek his enlargement on bail in the backdrop of the material compiled against him in the charge-sheet.

2 The FIR came to be registered on a complaint filed by the prosecutrix, aged 29 years, who run a coaching centre in partnership with her sister. One day, she received a phone call from the applicant, expressing his desire to join her coaching

classes and inquiring about the procedural formalities. On the 2nd day, the applicant met the prosecutrix and offered to work in the coaching classes subject to the condition that he would get free coaching. He was recruited as a co-ordinator and that his how the two got acquainted with each other. After some days, they developed close relationship and on 5th January 2019, she accompanied the applicant for watching a movie. On returning from the Theatre, she was taken to a lodge on the pretext that if the police find them in the odd hours of the night, they would create a trouble and therefore, she was advised to spent a night in the lodge with an assurance that he will not commit any misdeed. The allegation is, it is in this lodge the applicant committed forcible intercourse with the prosecutrix against her wishes. The incident scared the prosecutrix and she left the lodge early in the morning at 9 O'clock. She narrated the incident to her sister and when she inquired with the applicant, he assured that he is going to marry the prosecutrix. Based on this assertion, the prosecutrix continued the relationship with the applicant and on several occasions, she accompanied him to the lodge for establishing physical relationship. In the month of March 2019, she conceived out of the said relationship and the applicant persuaded her to terminate the pregnancy which was resisted by the applicant. He compelled her to terminate the pregnancy and kept on assuring the family members of the prosecutrix that he will marry her as soon as he secure a job. The pregnancy was terminated. The

prosecutrix lodged a complaint on 15th September 2019 pursuant to which the applicant was arrested.

3 The submission of Mr.Nikam, learned counsel for the applicant is that the relationship was consensual and the delay in lodging the FIR should be taken into account. He submit that the prosecutrix and the applicant are two major persons. They got involved with each other and in fact, there was a love relationship shared by them. By referring to the history given by prosecutrix herself during the course of medical examination, she has stated that they are in love relationship with each other, and this according to Mr.Nikam, is the factual position. The learned counsel Mr. Vaibhav Gaikwad appearing for the complainant is also heard. He submit that the prosecutrix had tendered an affidavit on record on 2nd March 2021 where she had given her 'No Objection' to release the applicant on bail and had stated that the complaint was lodged by her on account of the misunderstanding and frustration and she is ready and willing to marry the applicant. In the affidavit, she admit that the relationship between her and the applicant was by her consent and there was no inducement or force and the abortion was also done by her consent. The said affidavit came to be filed on 2nd March 2021. Today, however, learned counsel state that he is not ready to give his 'No Objection' for releasing the applicant n bail and he orally withdrew the said concession contained in the

affidavit and the matter may be decided on its own merits.

4 On perusal of the material contained in the charge-sheet, the delay in lodging the FIR cannot be ignored. In respect of an incident dated 6th January 2019, the prosecutrix approached the police station on 15th September 2019. Admittedly, while being subjected to medical examination, it is her own version that there was love relationship shared by the two. In the affidavit which is filed by the prosecutrix on 2nd March 2021, she state on oath that all type of relationship between herself and the applicant was by consent and there was no force or inducement. This affidavit continue to be on record. The prosecutrix is a woman aged 29 years and prima facie, it can be seen that the relationship between the two was consensual as even after the incident, where she was forced for sexual intercourse and the same was without her consent, she continued her relationship with the applicant and accompanied him to the lodge where they indulged physically with each other. She conceived out of the said relationship and was forced to abort. The said charge, whether the abortion was without her consent is a matter of trial as the medical papers of the hospital are also compiled in the charge-sheet, which opine that the pregnancy was 5 weeks and 2 days, and in the consent form, the applicant has projected himself as husband of the prosecutrix and she herself has signed on the said form.

5 In light of the aforesaid circumstances, since the investigation is complete and charge-sheet is filed, the applicant deserve to be released on bail and since learned counsel Mr.Nikam has sought instructions from the applicant, he will not enter the city of Pune where the prosecutrix is residing. The said statement is accepted and imposed as a condition for release of the applicant on bail. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant – Santoshkumar Malikarjun Swami, in connection with C.R.No.609 of 2019 registered with Sinhagar Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with 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 so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (c) The Applicant shall make himself available as and when required by the Investigating Officer.

(d) The applicant shall not enter the jurisdiction of Pune City.

4. The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J