

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1674 OF 2020

Hemanthkumar Mallappa Parashivamurthy @ Hemantkumar M.P.	Applicant
versus	
The State of Maharashtra and another	Respondents

WITH
INTERIM APPLICATION NO.1185 OF 2021

Neelam Rajpurohit	Applicant
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In the matter between :
Hemantkumar Mailappa Parashivamurthy
@ Hemantkumar M.P. Applicant
versus
The State of Maharashtra and another Respondents

Mr.Mahesh Vaswani with Ms.Dharini Nagda, Ms.Shreya Tiwari,
Ms.Pranjali Desai for applicant.
Mr.Chaitanya Pendse with Mr.Farad Pantaki, Chandni Tanna, Shrushti
Relekar i/by India Law Alliance for intervenor.
Mr.A.R.Kapadnis, APP, for State.
Mr.Devkar, PI, Versova Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th April 2021

PC :

1. The applicant is seeking bail in CR No.385 of 2020 registered with Versova Police Station for offences under Sections 376, 377, 420 and 506 of Indian Penal Code. The FIR was registered on 16th October 2020. The applicant was arrested on 2nd December 2020.

2. The case of prosecution is that complainant-victim has alleged that she is aged about 29 years. She owns a production studio. The work of editing, dubbing etc is brought to her studio by the producers. The applicant was introduced to her as editor. The applicant had carried out editing for a film in complainant's studio. Due to work conducted together, the complainant and applicant had developed intimacy. Both of them frequently visited the studio and their offices. On 19th August 2019 the applicant had purportedly showed the obscene videos to complainant. On 24th August 2019 while the complainant was sitting in studio and renovation work was in progress, the applicant gave call to her and enquired whether staff members have left the studio. He told her that he is visiting the studio to see renovation work. The applicant reached the studio at about 9.30 p.m. He inspected the work. He had a look at the work. The applicant then kissed on her forehead. He proposed her stating that he is already a married person. His divorce case is pending in Court at Bandra which would come to an end shortly and that he would marry her. He also disclosed that he has two children. He tried to had physical intimacy with complainant. The complainant told him that they can do the same thing after marriage. On 14th September 2019 at about 8.30 pm, the applicant visited the studio. The applicant had forceful physical relationship with her. She protested. However, the applicant continued to do so. On questioning him the applicant told her that they are going to marry and it does not make any difference. Since the complainant suffered pain, she had consulted Doctor at Kokilaben Hospital and on examination it was found that she had infection and swelling. On 24th November 2019 the applicant deliberately booked two rooms in the studio so that he can frequently visit the studio. Thereafter the

applicant frequently called the complainant and there was physical relationship between them on several occasions. On 16th February 2020 she was subjected to unnatural sex by applicant. The last episode of physical relationship had occurred on 11th September 2020. On 30th September 2020 the complainant learnt that the applicant had relationship with another lady and offence was registered against him u/s.376, 506 of Indian Penal Code at Delhi vide CR No.656 of 2015. The complainant questioned the applicant about it. She was intimidated that if she visits police station, she will have to face dire consequences. He refused to marry her. The complainant was scared. The FIR was lodged on 16th October 2020.

3. The applicant had preferred application for bail before Sessions Court at Dindoshi. The said application was rejected by order dated 2nd November 2020.

4. Learned advocate for applicant submitted that there is inordinate delay in lodging the FIR. The first incident had allegedly occurred on 19th August 2019. The FIR was registered on 16th October 2020. The first incident of sexual relationship had occurred on 14th September 2019 and the FIR was registered after a period of about more than a year from the date of said incident. From the tenor of FIR it can be seen that the relationship was consensual. The FIR mentions that rooms were booked by the applicant. There was continuous physical relationship between them as alleged by complainant. The applicant is in custody from the date of arrest. Further detention is not necessary. Investigation is complete and charge sheet is filed. The previous case referred to in the present FIR relates to sexual relationship. The applicant had performed marriage

with the said girl. They were residing as husband and wife. Subsequently offence was registered by his wife u/s 498A of IPC. There is motive to register present FIR against applicant. It is submitted that machine was put up in the studio by the applicant which was not returned to the applicant. The wife of applicant had lodged complaint with police apparently after the arrest of applicant in the present case. The medical evidence does not support prosecution case. Learned counsel for applicant has relied upon several decisions of Supreme Court as well as this Court by tendering compilation. The decisions pertain to delay in registration of FIR and cases relating to consensual relationship and grant of bail.

5. Learned APP submitted that victim was subjected to sexual relationship under the false promise of marriage. Specific overt act has been attributed to the applicant. The victim was exploited by the applicant. Although the applicant was a married person, the victim was induced to have physical relationship. The physical relationship was under coercion. The medical evidence supports prosecution case. The medical case papers of Kokilaben Hospital corroborates the version of complainant.

6. Learned counsel for complainant has vehemently opposed prayer for grant of bail to the applicant. It is submitted that the victim was induced to have relationship by concealment of facts. The element of cheating is involved. The applicant was a married person. There was false promise of marriage and under that promise the victim was subjected to sexual assault. The applicant was involved in similar case in the past. Such person is not entitled for grant of discretionary relief of bail. The contention of applicant

about motive attributed to the complainant is false. He relied upon decision of Supreme Court in the case of State of U.P. Vs. Naushad (AIR-2014-SC-384) by adverting to observations of Supreme Court in paragraph 13 of the said decision.

7. I have perused the documents on record. The FIR as stated above was registered on 16th October 2019. Undisputedly the complainant and the applicant were acquainted with each other at the studio of complainant. They have visited the studio and offices frequently. The first incident of showing the obscene video had occurred on 19th August 2019. Thereafter on 24th August 2019 the applicant had allegedly tried to get intimate with her and proposed her and told her that he is going to marry her. It was also disclosed to her that he was married person having children and that divorce proceedings are pending in Court. On 14th September 2019 there was sexual relationship between them. The FIR also mentions that applicant had booked two rooms in the studio and thereafter on several occasions there was sexual relationship between both of them. After learning about the fact that the case was registered against applicant, the complainant had allegedly questioned the applicant about the previous case and apparently there was threat by applicant and there were differences amongst both of them from that point of time. The last incident of sexual relationship according to complainant had occurred on 11th September 2020. The FIR was lodged on 16th October 2020. Assuming the allegations to be true, apparently the relationship appears to be of consensual nature. Learned counsel for intervenor had submitted that there was false promise of marriage and the victim was exploited by the applicant. The applicant is in custody from 16th October 2020. The charge sheet is already filed.

8. I have also perused the medical examination papers. The victim was medically examined after a period of five days from lodging of FIR. The medical examination report is apparently silent about injuries. The medical case papers of Kokilaben Hospital indeed mentions that there is swelling and abrasion. The question is whether it can be attributed to applicant. Considering the factual aspects of the matter, the applicant need not be detained further in custody. On certain terms and conditions bail can be granted to him. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.385 of 2020 registered with Versova Police Station, Mumbai, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Versova Police Station once in a month on first Saturday of month between 11 am and 1 pm for a period of six months and thereafter once in three months on the first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant shall not try to tamper with evidence;
- (v) The applicant shall not approach the victim-complainant;
- (vi) The applicant is permitted to furnish cash bail of Rs.50,000/- for a period of eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)