IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.281 OF 2022

Mr.Zakeria Mehbbobali Shaikh … Applicant
V/s.
State of Maharashtra … Respondent

Mr.I.A.Khan, Advocate for the Applicant.
Ms.A.A.Takalkar, APP for the Respondent/State.
Mr.Sandeep Mhaske, API, Borivali Police Station present.

CORAM : SMT. BHARATI H.DANGRE, J.
DATE : SEPTEMBER 15, 2022.

P.C.:

1. The applicant faces charge under sections 376, 384, 328 and 506 of the Indian Penal Code and 66(E) of the Information Technology Act. He came to be arraigned as an accused in C.R.No.223 of 2019 registered with Dindoshi Police Station on 15th May, 2019 at the instance of the prosecutrix aged 26 years who reported about the happenings of the events from March, 2018 to October, 2018 in the month of May, 2019. The applicant came to be arrested on 20th November, 2020 and on completion of investigation charge-sheet is filed.

2. The learned counsel for the applicant has invited my attention to the two statements of the prosecutrix, first dated 15th May, 2019 and another dated 12th December, 2020, which according to him make the prosecution case doubtful and I have reason to express my agreement with the learned counsel.

The statement of prosecutrix dated 15th May, 2019 is to the effect that she is residing at the given address and from 2017 she was into online capture work. There was whatsapp group of those associated with the service and one day she received a mobile number for some transactions and the number belonged to the applicant. For some business transactions, she provided the address to the applicant and believed that he is a good person. Thereafter, they indulged in telephonic conversation and she was informed about share investment. She alleged that on account of the said investment she transferred some funds to his account through RTGS in March, 2019. It is alleged that, she received an invitation for a meeting and when she reached the given spot, he proposed her for marriage and even offered her that, after she divorce her husband he would perform the marriage. Her version is that, despite her opposition she was served with a spiked drink. When she regained her consciousness, she found herself in a nude condition and realised that sexual intercourse was committed on her.

Despite this, she continued to chat with the applicant and somewhere in June, 2018 he expressed his desire to meet her. When she met him, it is alleged that he confronted her with the nude photographs and demanded a sum of Rs.5 lakhs and she was threatened that if the amount was not paid, he would make the photographs viral. Accordingly, she transferred the amount into his account by RTGS. Thereafter, she was asked to transfer the money to various accounts given by him and one such account was belonging to Vinayak Bhatt. As per the complainant upto October, 2018 she transferred Rs.35 lakhs from the account of her father. It is her allegation that he demanded further amounts and threatened her to kidnap her daughter.

In her supplementary statement recorded on 12th December, 2020, she took a complete "U" turn, when she stated that after being introduced to the present applicant he assured her to secure a plot for lesser amount and she went to Banglore, where she was shown plot and the consideration of the plot was fixed as Rs.35 lakhs. Considering the deal to be profitable and since the copy of the agreement was also forwarded to her, now she state that from the account of her parents she transferred a sum of Rs.35,00,000/- in the account of Vinayak Bhatt and to two other persons were friends of the present applicant. This amount of Rs.35 lakhs was towards a land deal.

She continued with her allegation, that one day on the pretext of performing marriage the applicant invited her to his house and committed sexual intercourse. Her photographs were clicked and in the statement it is stated that cash amount of Rs.35 lakhs was accepted by him, to resist from making the photographs viral.

4. The learned counsel for the applicant has invited my attention to another important aspect for the case of the transaction, where the statement of Vinayak Bhatt whose reference is made by the complainant in her statement is recorded. His statement is to the effect that applicant approached him and told him that some amount is going to come to his

account and accordingly Rs.29 lakhs came to his account, which he returned to the applicant. Apart from this, he also paid Rs.5 lakhs to the applicant.

The learned counsel for the applicant has invited my attention to the Mortgage Deed which is annexed to the application where Vinayak Bhatt is the first party whereas the complainant is the second party and the deal is executed at Banglore in respect of transfer of a vacant plot, situated in Hennur village. It shows that there was some dealing with Mr. Bhatt, who in his statement had stated that it is at the instance of the applicant the amount was received in his account and it was transferred.

The aforesaid version make the case of the prosecution doubtful and in the wake of the improvement, in the version of the prosecutrix to the effect that Rs.35 lakhs was paid in cash, apart from the amount of Rs.35 lakhs towards land transaction, when there is no material to show as to how she transferred additional sum of Rs.35,00,000/-, with no proof.

The applicant hence, deserve his release on bail as he may face the consequences of the accusation at trial. I am inclined to release him on bail in the subject C.R. with certain conditions.

Needless to state that the observations made above are, *prima facie,* in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with with he is charged, shall not get influenced by the above observations, in any manner.

ORDER

i. The Criminal Bail Application is allowed and disposed off.

ii. The applicant is released on bail in connection with Crime No.223 of 2019 registered with Dindoshi police station on his furnishing PR Bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties in the like amount.

iii. The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence.

iv. The applicant shall mark his attendance on first Monday of every month in the concerned police station between 4.00 p.m. to 5.00 p.m. till framing of charge.

(SMT. BHARATI H. DANGRE,J.)

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