

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

CRIMINAL WRIT PETITION NO.2089 OF 2022

Viren Raghunath Patel

.. Petitioner

Versus

State of Maharashtra

.. Respondent

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Mr.Bhaskar J. Sarwade, Advocate for the Petitioner.

Mr.Arfa Sait, APP for the Respondent – State.

Ms.Harshada Morey i/b. Mr.Sunny Waskar, Advocate for the
Intervenor.

Mr.Nitin D. Sawant, PC Bangur Nagar Police Station, present.

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CORAM : PRAKASH D. NAIK J.

DATED : JULY 14, 2022.

P.C. :

The petitioner is aggrieved by order dated 11th May, 2022, passed by the Sessions Court in Miscellaneous Application Exhibit-3 in Sessions Case No.159 of 2022, refusing prayer for handing over passport to the petitioner.

2 First Information Report (“FIR”, for short) has been registered on 8th March, 2021 against the petitioner *vide* C.R.No.77 of 2021, with Bangurnagar Police Station for the offences punishable under Sections 328, 494, 376(2)(N), 377, 506, 420 and 417 of Indian

Penal Code (“IPC”, for short) and Section 67-A of the Information Technology Act (“IT Act”, for short).

3 The first informant had alleged that she had registered her name for marriage on website, Jeevansathi.com, in January 2020. She was contacted by accused. He told his name and told the complainant that he is settled in USA. Thereafter, he kept on calling and chatting with her. On 14th February, 2022 the accused told her that he has come from USA to Mumbai and checked in Hometel Grand Sarovar Hotel, Link road, Malad West, Mumbai. She was called at Hotel. The complainant met the accused at 11.00 A.M. He was aged around 65 years. She talked to him. After lunch she returned home. She had agreed to join accused for dinner at about 8.00 P.M. The complainant again went to Hometel hotel. Thereafter, both went to another hotel at Sakinaka, Andhiri, Mumbai. They consumed ‘beer’. At that time she went to washroom, she consumed the Beer left in her glass and had dinner. She felt dizzy. She told accused about it. He said that he would take her to Doctor. At about 1.30 A.M. they returned to Hometel hotel by Auto rickshaw. The accused took her to hotel with him. She became unconscious on bed. In the morning at 7.30 AM she woke up and found that accused was sleeping next to her on bed. Both were undressed. She questioned, accused. At that time the accused

showed her video recorded in his mobile phone about natural and unnatural sex performed by accused forcibly. The complainant told him that she would approach police. The accused threatened her that, he would defame her by making the video viral on social media. She returned home. Thereafter the accused kept on threatening her. On 22nd June, 2020, the accused called her to Nasik for performing marriage. She went there with her brother. Marriage was performed. It was registered at Nasik. Certificate was obtained. She stayed there till 19th July, 2020. The accused had unnatural sex with her. The complainant has learnt that the accused performed three previous marriages and having children. Hence, she started staying separately. The accused had cheated her by performing marriage, although he had performed three marriages. On 8th July, 2020, the accused had impressed that flat No.1/A is situated at Gangapur, on the basis of false documents and transferred premises in her name by executing documents, although such premises was not in existence.

4 The petitioner was arrested on 26th November, 2021. Learned Additional Sessions Judge by order dated 16th February, 2022, granted bail to the petitioner.

5 The petitioner preferred application for relaxation of

condition before the Court of Sessions in Bail order. He was not in position to furnish surety. By order dated 27th April, 2022 the petitioner was permitted to deposit original sale-deed of property at Nasik or surety with security Bond.

6. The petitioner preferred Misc. Application Exh.3 before Sessions Court for return of passport and permission to travel to USA. The said application was rejected by order dated 11th May, 2022.

7. Learned Advocate for petitioner submit that, petitioner is citizen of USA. He needs to travel to USA. His daughter aged around 16 years is in USA. She is ill. The petitioner was not absconding. He did not attempt to flee from India. He was detained while he was coming to India. This fact is evident from entry in passport. He has furnished security while executing bail bond. He has been falsely implicated in this case. There is delay in FIR. The petitioner is 65 years old person. FIR has been filed to trap him. He is sole custodian and care taker of his daughter who is alone in USA. Since, last 6 months he is in India. This is clear case of Honey-trap. Police took his phone. The allegation that petitioner was arrested from flight while he was fleeing from India is false. Chargesheet is filed. The mother of complainant demanded one crore from petitioner. MoU was prepared by stating

that if informant comes to USA he would deposit one crore in his account. Petitioner deposited 50,000/- in account of informant's mother. Before FIR informant and her associates siphoned more than 20 lakhs from petitioner. At the time of FIR, petitioner was in USA taking care of his daughter. He came to India to answer FIR. He landed at New Delhi Airport. He was detained while going through immigration due to look out notice. He was arrested. He spent three months in jail. While granting bail there were no restrictions on his travel to USA. Petitioner may be permitted to travel to USA for three months. The petitioner has tendered affidavit stating that his minor daughter is in America. His passport is seized by Bangur Nager Link Road Police Station. He gave his schedule of travel. He would stay in America at 963, Kalmia Drive, Lawrencville, GA, 30044, USA. He has deposited title deeds of two immovable properties situated at Nashik in the Sessions Court as security for his appearance in the Court.

8. Learned APP submitted that after registration of FIR, the petitioner was not available. He was arrested after lookout notice was issued. If the petitioner is allowed to travel abroad, there is every likelihood that he will not return to India. The offence is of serious nature. The petitioner is charged for offences punishable under Sections 376, 328, 494 and 377 of IPC. Learned APP tendered police

report dated 24th June, 2022. The Report mentions that investigation is conducted. Statements of witnesses are recorded. The petitioner was not found. Hence, look out notice was issued against him. The petitioner came from Dubai to Delhi. He was taken in custody at Airport and arrested. His passport and phone is seized. The petitioner/accused is citizen of America (NRI). The police have no objection for returning petitioner's passport and OCA documents on requisite terms and conditions. Report dated 24th June, 2022 is taken on record.

9. Learned advocate for the complainant submitted that the petitioner may not be allowed to travel to USA. He is involved in serious offence. He will not be available for trial. Specific role has been attributed to him. He has relied upon the false medical case papers, which annexed to this application. The medical case papers bears dated 28th June, 2022. The petition has been filed prior to said date. The victim has been subjected to sexual assault. The Sessions Court has assigned reasons for rejection of petitioner's application. Petitioner was arrested after issuance of look out notice at Airport. He was absconding.

10. The petitioner contends that his minor daughter is in

USA since last six months. He is relying on order passed by Juvenile Court of GWINNETT COUNTY STATE OF GEORGIA, which mentions that petitioner has been granted sole legal custody of minor daughter. According to petitioner he left India on 3rd December, 2020. The FIR was registered on 8th March, 2021. While granting bail *vide* order dated 16th February, 2022, there was no restriction on his travel to USA. Learned Advocate for Informant however, submitted that condition was not imposed since passport was seized. I have perused Police Report dated 24th June, 2022. It is stated that the petitioner came from Dubai and detained at Airport of Delhi. Thereafter he was arrested. Thus, there is no evidence that petitioner was trying to flee this country after registration of FIR. It is evident that petitioner came to India after registration of FIR. The petitioner has been granted bail *vide* order dated 16th February, 2022 on condition that, he shall furnish surety of 2 lakhs and cash security of 3 lakhs and that he shall not tamper with witnesses and attend trial court regularly. Chargesheet has been filed. The order dated 16th February, 2022 was modified by order dated 27th April, 2022. Since the petitioner could not arrange surety being citizen of USA, he was directed to deposit original sale deed of property bearing plot No. 9, admeasuring 258.75 sq. meters, Survey No.48/2/2 situated at Anandwadi, Nasik, Tal. Nasik as surety with security Bond in the Court and he shall not alienate in

any manner till the decision in the trial.

11. On perusal of documents on record, it is apparent that the FIR was registered on 8th March, 2021. According to the complainant, the alleged incident had occurred on 14th February, 2020. Thereafter, the marriage was performed on 24th June, 2020. The FIR was registration on 8th March, 2021. It is not the case that the petitioner absconded after registration of FIR. Pursuant to the registration of the FIR, since the petitioner was not available, lookout notice was issued against him. It is relevant to note that the petitioner came to India and after returning he was arrested. The return of passport and travel abroad are the issues which are interlinked with each other. The petitioner was granted bail on conditions. Learned Advocate for informant had submitted that this medical case papers mentions date as 28th June, 2022. The petitioner has submitted that the first page of case papers indicates that consultation was as 28th June, 2020.

12. Considering all the factual aspects and the documents on record, I pass the following order:

:: ORDER ::

- (i) Writ Petition is allowed;

- (ii) The Passport of the petitioner be returned to the petitioner within one week from the date of uploading this order.
- (iii) The petitioner is permitted to travel to USA for a period of three months from the date when he leaves the country;
- (iv) The petitioner shall return within three months and after return, he shall redeposit the passport before the trial Court;
- (v) The petitioner shall provide details of his visit to USA including his place of residence in USA, telephone number etc. to the Investigating Officer;
- (vi) Writ Petition stands disposed of accordingly.

(PRAKASH D. NAIK, J.)