

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2835 OF 2021
(modified as per order dt: 26/08/2022)

Prathmesh Sunil Bait .. Applicant
Versus
The State of Maharashtra .. Respondent
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Mr. Ganesh Sovani, a/w Ranjana Humane, for the applicant.
Mr. Milan Ravul for the complainant
Mr. S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th JULY, 2022

P.C:-

1 Heard the learned counsel for the applicant, the counsel for the complainant and the learned APP. The applicant is charged with offence punishable under section 354 (C) of IPC along with section 66 (E) of the Information and Technology Act 2008 and Section 12 of the POCSO Act. The applicant is working as a sweeper in the tutorial where various students attend their classes for 11th and 12th standard. The tutorial being conducted on the address given by the complainant who is working as central co-ordinator and as per the complainant, there are separate toilets for boys and girls.

On 3/03/2020, one girl from the class brought a mobile phone to the coordinator which was found near the water tank and the camera of the said mobile was focused towards the toilet

seat.

On inquiry, it was revealed that that the mobile belong to the applicant and he had fled from the spot. The Mobile Phone could not be opened on account of the pattern lock. The matter was reported to the Borivali Police Station. The applicant was confronted with the mobile and when it was opened, a video of 3:28 mins was found to be recorded of a girl seated on the toilet seat.

The applicant face accusations that he had recorded the video of a girl engaged in a private act, and therefore, Section 354 (c) was invoked.

2 During the course of investigation, the supplementary statement of the complainant came to be recorded on 9/03/2020 where she categorically stated that the girl in the act is of the tutorial class, as she is wearing Yellow colour T-shirt belonging to the tutorial, but she is unable to identify the girl as her face is not clear in the video. The said aspect also find mention in the charge-sheet.

3 Section 354 (C) of IPC punishes any man who watches, or captures image of a woman engaging in a private act in the circumstances where she would usually have the expectation of not being observed by any person at his behest or disseminate her image, with imprisonment which shall not be less than 3 years but which may extend to 7 years.

The term 'private act' is defined by way of explanation appended to the said section and the act possibly would be

covered within the said explanation. However, as far as the supplementary statement of the applicant is concerned, and which is also referred to in the charge-sheet, the identify of the girl is not established and therefore the question which arises is that whose privacy is invaded, and this can be discerned at the time of the trial.

The applicant, who has been arrested on 05/03/2020, do not be further incarcerated and he may take the consequence of the said act in case, the offence under section 354 (C) is made out after the trial is concluded and depending upon the evidence that will be placed before the concern court for establishing the charge.

In the wake of the above, the applicant deserve his release on bail.

ORDER

- (a) The Applicant Prathmesh Sunil Bait shall be released on bail in CR No. I- 116 of 2020 registered with Borivali Police Station, on executing P.R. bond to the extent of Rs.25,000 and furnishing one or two sureties of the like amount.
- (a1) The applicant shall be released on cash bail in lieu of sureties for a period of 6 weeks.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any

person acquainted with facts of case and shall not tamper with prosecution evidence.

- (c) The Applicant shall attend the trial on regular basis.
- (d) The Applicant shall mark his attendance to the concerned police station once in every three months.

4 The application is allowed in the above terms.

(SMT. BHARATI DANGRE, J.)