

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2451 OF 2021

Dhiraj Gajanan Nagulkar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Akhilesh T. Jaiswal for the Applicant.

Mr.R.M. Pethe, APP for the Respondent –State.

CORAM : C.V. BHADANG, J.

DATE : 28 JANUARY 2022

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SANTOSH
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NILAM SANTOSH
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Date: 2022.01.28
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P.C.

. By this Application the Applicant apprehending arrest in connection with the Investigation of Crime No.20 of 2020 of Cyber Police Station, Nashik City under Section 354-D, 504 of the Indian Penal Code and Section 66(C), 67 and 67(A) is seeking anticipatory bail.

2. I have heard the learned counsel for the parties.

3. It appears that there was a close acquaintance between the first informant and the Applicant prior to the marriage of the first informant and during that period there were certain intimate photographs of Applicant and the first informant

which were taken and stored by the Applicant in his mobile phone.

4. After the marriage of the first informant these photographs were allegedly sent and the first informant was being coerced on that count. The husband of the first informant also came to known of the same. After the complaint the offence came to be registered against the Applicant.

5. The learned counsel for the Applicant submitted that Section 67 of the Information Technology Act, 2000 is a bailable offence as it invites maximum sentence of three years and fine.

6. Insofar as Section 67A is concerned it is submitted that although the photographs were obscene that cannot be said to be containing “sexually explicit act or conduct”, within the meaning of Section 67A of the said Act.

7. The learned counsel for the Applicant in this regard has referred to the order passed by this Court in case of ***Pramod Anand Dhumal V/s.State of Maharashtra***¹, in which this Court has found that sexual activity defined in Blacks Law Dictionary as “Physical sexual activity or both persons engaging in sexual relations”.

1 2021(1) Bom.C.R. (Cri) 762

8. The record discloses that the Applicant has reported to the Investigating Officer and has co-operated with the investigation.

9. The learned Additional Public Prosecutor has pointed out that this was second incident after parties had arrived at a Memorandum of Understanding (MoU). He therefore, submitted that the likelihood of misuse of the bail cannot be ruled out. The learned Additional public Prosecutor however, did not dispute that the Applicant has handed over the mobile phone which according to the Investigating Officer is formatted and not in a working condition.

10. Considering the overall circumstances the following order is passed.

ORDER

(i) In the event of his arrest, in connection with investigation Crime No.20 of 2020 of Cyber Police Station, Nashik City, the applicant shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties in the like amount.

(ii) The applicant shall report to the investigating officer once in two weeks and as and when required, till completion of the investigation.

(iii) The applicant shall co-operate with the investigating agency.

(iv) The Appellant shall not make any attempt directly or indirectly to contact the informant or any other witnesses and shall not otherwise tamper with the prosecution evidence/witnesses.

(v) The Applicant shall not indulge any act of publication/circulation of any photographs, video and/or any obscene material.

(vi) In the event of the breach of any of the conditions the bail is liable to be cancelled.

(vii) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.