

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1000 OF 2023
WITH
CRIMINAL APPLICATION NO.2189 OF 2023
IN
BAIL APPLICATION NO.1000 OF 2023**

Prasad Anil Mahamine

Age: 31 years, Occu.: Service,

R/o. Laxminarayan Nagar, Gondhavani Road,

Ward No.1, Shrirampur, Tal. Shrirampur,

Dist. Ahmednagar.

..Applicant

Versus

The State of Maharashtra

Though, Public Prosecutor,

High Court of Bombay

Bench at Aurangabad

..Respondent

...

Mrs. Sunita G. Sonawane, Advocate for the Applicant.

Mr. K. S. Patil, APP for Respondent-State.

Mr. P. S. Dighe, Advocate for Complainant to Assist the APP.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 04th SEPTEMBER, 2023.

ORDER:-

1. By this application filed under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in Crime No.2095 of 2020 registered with Shrirampur (City) Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 376 (2) (n), 376 (D) 385, 386, 420, 323, 120(B), 506 r/w 34 of the Indian Penal Code.

2. The investigation was set in motion on the information given by the victim. In nutshell she alleged that the applicant/accused is conversant with her since school days. In the year 2014, she had married, but there was matrimonial discord in the year 2016. The accused

developed contact with her under pretext that he can arrange for a job with help of his contacts in Pune. In August 2018, the informant went to Pune for interview as informed by the applicant/accused. She was received by the accused/applicant. After interview, when she was feeling unwell, she was given tablets and advised to take rest. The informant alleged to loss her consciousness. Later on, she realized that she has been raped by the accused/applicant. However, the applicant threatened her under the pretext that he has recorded video.

3. It is further alleged that in the month of August 2018 again the applicant/accused raped her under the fear of making video clip viral. It is further alleged that, in the year 2019 informant was remarried, however, again there was matrimonial discord. The accused/applicant again called her to Pune for interview and committed rape. It is further alleged that on 02.08.2019 the accused/applicant introduced the informant with his sister, who arranged for her stay at ladies hostel. It was informed that Puja the sister of the accused/applicant is in the business of investment agency. The accused/applicant demanded Rs.5,00,000/- in the month of November-2019. Because of threats of the accused/applicant, informant arranged the said amount from her father and deposited in the account of the accused/applicant at Axis Bank on 31.12.2019. The accused/applicant has time and again forced the informant to transfer the amount in the account of his sister. Accordingly, total amount of Rs.61,44,600/- is transferred in the account of the accused Puja.

4. It is further alleged that on 28.02.2020 while the informant had been to the house of accused Puja, her husband raped her under the pretext that he has video clip. It is further alleged that the accused/applicant and his sister extorted sum of Rs.61,44,600/-. Hence, she lodged

the report dated 21.10.2020. The investigation was carried in the matter and the accused/applicant was arrested in pursuance of the aforesaid offences on 27.10.2020. The charge-sheet is filed. Earlier Bail Application No.201/2021 has been withdrawn with intention to approach the Sessions Court after filing of charge-sheet. There is no adjudication of the bail plea of the accused/applicant on merits.

5. The learned Advocate appearing for the applicant would submit that the previous bail application filed by the accused/applicant before this Court has been withdrawn without adjudication on merits. Therefore, the present application can be considered on merits. She would submit that the applicant and the informant had friendly relations that was blossomed in love affair. They were enjoying company of each other. Even, assuming that there were sexual relations between them, those were consensual in nature. She would submit that there were financial transactions between the sister of the applicant and brother of the informant, who is in the business of money lending. There were bilateral transactions, which can be gathered from the account statement, which are made part of the charge-sheet. By inviting attention of this Court to the account summary of the Axis Bank, she would submit that the large amount has been returned by the accused/applicant to the brother of the informant. However, because of some dispute over the financial transactions, false report with allegation of rape has been lodged. She would further submit that the tenor of the allegation in the complaint is sufficient to infer that concocted story has been hatched with intention to implicate the applicant, his sister and husband of the sister. She would submit that first incident alleged is of August 2018. Thereafter, time and again allegation is made that the applicant had raped the informant till filing of the report. However, there is no explanation regarding such a delay in lodging the report.

She would further submit that alleged video clip, first incident of August 2018 or even subsequent incident could not be found during the course of investigation. Although, this Court time and again called for report of Forensic Science Laboratory (FSL) about mobile handset, no such report could be produced. The gamut of the prosecution story is hallow and baseless. She would submit that the applicant was released on temporary bail, since his mother was seriously ill. The applicant/accused has not misused the liberty and reported back within time. She would submit that the trial would take its own course. The applicant is behind the bar for more than three years. Further, the detention of the applicant would not be necessary. Hence, she urged to release the applicant on bail.

6. Per contra, learned APP appearing for the State and Mr. Dighe, learned Advocate appearing for informant vehemently oppose the prayer for grant of bail. They submit that the previous application for bail was considered after charge-sheet. However, during the vacation the applicant has withdrawn the same under the pretext that he wish to move before Sessions Court after charge-sheet. It is further submitted that heinous offence has been committed by the applicant. He took disadvantage of the mental condition of the informant and committed rape by administering her some pills. Further, under threat of making viral video clips, he continued to rape the informant at various occasions. It is also submitted that the applicant and other accused persons have financially exploited the informant using the same threat of making video clip viral. It is further submitted that the Bail Application No.1023/2021 and Bail Application No.460/2022 filed by the co-accused Vishal Dhole has been rejected by this Court considering the evidence available on record. The accused/applicant is prime accused. For the reasons given in the orders of rejection of the plea of Vishal Dhole, the

present application also deserves to be rejected. It is submitted that the release of the applicant is likely to hamper the smooth trial and also there is possibility of tampering the evidence. It is, therefore, urged that the application is liable to be rejected.

7. Having considered the submissions advanced, apparently it can be observed that informant and the applicant were knowing each other since their childhood and they were schoolmates. From August 2018, the victim is visiting Pune and the applicant is helping her to find out the job. It is alleged that in August 2018, when informant had been to Pune, at that time the applicant had given some tablets to the informant due to which she became unconscious. Taking advantage of the situation, she was raped by the applicant. However, because of the threats given by the applicant, she has not disclosed the incident to anyone. She further alleges that in the year 2019 she had performed second marriage, but that was failed and again she visited Pune for interview as per suggestions of the applicant and again she was raped. It is again allegation of the informant that in the year 2019 the applicant introduced her with his sister. She had arranged for stay of the informant at ladies hostel. She was in visiting term with the sister of the applicant. It is further alleged that in November 2019 the financial transactions started between the sister of the applicant and the informant. As much as Rs.61,44,600/- has been transferred in the account of the sister of the applicant. Further allegations are against the third accused, who is husband of the sister of the applicant that on 28.08.2020, when the sister of the applicant was out of the house her husband raped the informant.

8. The document relating financial transactions are made part of the charge-sheet. It can be observed that there were bilateral trans-

actions. The amount has been transferred by the informant in the account of the sister of the applicant, so also the applicant, his sister and the husband of the sister of the applicant have transferred the amount in the account of the informant, her brother and father. The FIR has been lodged in the October 2020. The applicant is arrested in pursuance of the registration of the offence. The careful scrutiny of the contents of the charge-sheet, particularly the statements of the witnesses namely Dhanaji Balasaheb Sable, Sujata Tanaji Sable, Chhaya Kiran Pawar and Samruddhi Kiran Pawar, who are the neighbours of the sister of the applicant shows that the informant has participated in the birthday programme. They had cordial relations. At no point of time she was forced by the applicant. It can also be observed that, even in absence of the applicant the informant used to visit the place of the sister of the applicant.

9. In this background, if the story given in the FIR is considered, there is reason to *prima facie* accept the contentions raised on behalf the applicant that after dispute over financial transactions the present complaint has been lodged. It is difficult to accept that, if in the year 2018 the applicant raped the informant, still she continued to remain in his company, so also entered in financial transactions with the sister of the applicant and transferred the amounts as demanded by them. It is difficult to accept that the informant was blackmailed to extract the amount, particularly when there are bilateral transactions as per account statements. The applicant and his sister have returned major portion of the amount to the informant, her brother and so also father, which depicts healthy financial relationship like business transactions. It is difficult to believe that blackmailers accepts money through bank transactions and also returns some part in same way.

10. The previous bail application filed by the applicant has been withdrawn without adjudication on merits. It appears that, in fact at the time of withdrawal of the application, charge-sheet was filed, but without entering into the merits, the application has been withdrawn and fresh application was tendered before the Sessions Court. Therefore, in absence of the adjudication of the bail plea of the applicant on merits by this Court, there is no impediment in considering the present application. It is true that the application filed by the co-accused has been rejected by this Court. However, on perusal of those orders, it can be seen that earlier application was rejected with liberty to file application after receipt of the CA/FSL report. The subsequent application was again moved in absence of such report and same has been rejected. Therefore, the rejection of the application of the co-accused cannot be said to be the hurdle to consider the present application.

11. It appears from the record that this application was placed for consideration before this Court (Shri. S. G. Mehare, J.) on 26.07.2023. The learned APP was called upon to produce CA report about the mobile handsets of all the accused persons. Again matter was posted before this Court on 08.08.2023. On the said date last chance was granted to produce CA report. Thereafter, again the matter was posted on 21.08.2023 and at the request of the learned APP the matter was adjourned to produce Forensic Science Laboratory (FSL) report. However, no such documents are filed. The applicant is behind the bar from 27.10.2020. The gamut of the allegation of first informant is that the applicant had some video clip regarding sexual act committed by him with the informant and under the pretext of making clip viral, he had continued the sexual relationship and also extracted the money. Pertinently, none of such video clip could be gathered during the course of investigation, although, mobile phones of all the accused persons are

seized during the course of investigation. Till this date, FSL reports are not filed. In absence of any such evidence, the submissions advanced on behalf of the applicant that the informant and applicant were childhood friends and they had developed affinity for each other and even, it is assumed that there was sexual relationship, it was consensual in nature cannot be ruled out. It is informed that for want of FSL report there is no progress in the trial. The trial will take its own course. The applicant is behind the bar for almost three years. Further detention of the applicant is not necessary. So far as interest of the prosecution is concerned, it can be protected by putting stringent conditions. As such, case is made out for grant of bail.

12. It is made clear that the observations made hereinabove are on *prima facie* consideration of the material in the charge-sheet only for the purpose of disposal of this application and that shall not construed as findings of this Court.

13. Hence, the following order:

ORDER

(i) Criminal Bail Application is allowed.

(ii) The applicant, Prasad Anil Mahamine be released on bail in Crime No.2095 of 2020 registered with Shrirampur (City) Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 376 (2) (n), 376 (D) 385, 386, 420, 323, 120(B), 506 r/w 34 of the Indian Penal Code on executing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each on following condition:

- a. The applicants/accused shall not tamper with the prosecution evidence and shall not contact and pressurize the prosecution witness named in the charge-sheet in any manner.
 - b. The applicant shall not indulge in any criminal activity.
 - c. The applicant shall not leave State of Maharashtra without prior permission of the Sessions Court till conclusion of the trial.
 - d. The applicants/accused shall attend the proceedings before the Sessions Court.
- (iii) Criminal Bail Application is disposed of.
- (iv) Criminal Application No.2189 of 2023 to assist the learned APP is allowed.

(S. G. CHAPALGAONKAR)
JUDGE