

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO.1311 OF 2023

Dattatrya Shamrao Kadam	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Niranjan Mundargi i/by Mr. Rishikesh Mohite, for
the Applicant.

Mrs. Rutuja Ambekar, APP for State – Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 5, 2023

P.C.:

1. The apprehending arrest in connection with F.I.R. bearing Crime No.51 of 2023 at Murgud police station for offences punishable under Sections 292, 293 of the Indian Penal Code (for short 'IPC') and 66(E) and 67(A) of the Information Technology Act, 2000 for short 'I.T. Act'), the Applicant has invoked Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.').

2. The prosecution case, in short, is as under:

Mr Vikas Dattatraya Badave, Police Inspector at Murgud police station, lodged F.I.R. on 31st March 2023, alleging that the local newspapers and media published news about "fake and bogus doctor engaging in obscene and indecent behaviour with the women" The news articles were published based on anonymous letters about the incidents of exploitation of various women. Additionally, there were some rumours and news circulated in the

city that one bogus and fake doctor was making video clips and taking photos of indecent acts which were being circulated among the city. The local residents of the city also sought action against the doctor. On 29th March 2023, at 11:00 am, the residents of the city approached the concerned police station with the request letter demanding action against the bogus and fake doctor who had allegedly taken advantage of the helplessness of the women and had taken obscene and indecent videos and photographs of the various women. On the complaint and the request letters made to the investigating agency, the police staff, along with lady police officers and the Nirbhaya Squad, tried to reach out to the victim women. However, before the registration of F.I.R., the investigating officer could not get the information from the victim. Nevertheless, based on the available material, the respondent lodged a report against the Applicant for making obscene videos and photographs with the women and an unknown person for circulation of obscene videos and photographs.

The Applicant, therefore, approached learned Sessions Judge, Kolhapur, by way of Application under Section 438 of Cr.P.C., which came to be rejected by order dated 17th April 2018. Aggrieved thereby, the Applicant has filed the present Application under Section 438 of Cr.P.C.

3. According to the Advocate for the Applicant, the Applicant has no role whatsoever in relation to the acts alleged in the F.I.R. According to him, the Applicant himself is a victim of circulation of obscene videos and photographs as no person would cause of publishing of such obscene videos and photographs containing

himself. According to him, some third person helping the Applicant to recharge his mobile and update software misused the data in the cell phone, and the Applicant is in no way responsible for publishing lascivious material. According to him, none of the ingredients of an offence under Section 66 (E) and 67 of the I.T. Act, Sections 292 and 293 of IPC have been made out. The Applicant has been falsely implicated.

4. Per contra, learned APP submitted that the offence alleged against the Applicant is primarily under Section 67 of the I.T. Act along with Section 66 (E) and Section 292 and 293 of IPC. The Applicant was exclusively controlled over the data of the cell phone. Without his active participation, no other person could access the data on his cell phone. She, therefore, submitted that the allegations against the Applicant are serious as the Applicant exploited the helplessness of women under the colour of his profession. The nature of the allegation is such that it is difficult for any woman to come forward and record a statement supporting the prosecution's case. Therefore, custodial interrogation of the Applicant is necessary. She submitted that the investigation is at the initial stage and, considering the nature of the alleged exploitation of various women, if any, needs to be investigated by taking the applicant into custody.

5. I have carefully considered the case diary and the material on record. According to the Applicant, the allegations against the Applicant prima facie do not constitute an offence under Section 66 (E) and 67 of the I.T. Act. To consider the said submission, it is necessary to reproduce relevant provisions of the I.T. Act. Section

67 of the I.T. Act reads as under:

67. Punishment for publishing or transmitting obscene material in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

6. Section 67 of the I.T. Act creates offence in relation to a person who (i) publishes, (ii) transmits, (iii) causes to be published, (iv) transmits in the electronic form, any lascivious material, (v) appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

7. The expression of electronic form has been defined under Section 2 (r) of the I.T. Act, which reads as under:

(r) “electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

8. Careful reading of Section 2 (r) of the I.T. Act- makes it clear

that any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device; can be termed as material in electronic form.

9. Photographs produced on record by APP indicate that the photographs have been taken by the Applicant himself. According to the Applicant, he has not caused such photographs to be published, and there is no transmission in electronic form. It is *prima facie* difficult to accept the submission made by the Applicant as no other had access to the data in the cell phone of the Applicant. The material on record indicates that the lascivious material was in exclusive control of the Applicant. Whether it was caused to be published by the Applicant or any person is a matter of investigation. The investigation agency needs to be allowed to investigate the applicant's role by custodial interrogation. It is necessary to investigate the motive, preparation, and commission of the offence of publishing lascivious material, which is not possible without custodial interrogation of the Applicant.

10. According to the prosecution, the data in the cell phone containing lascivious material as regards victims was under the exclusive control of the Applicant. Whether the Applicant sent it or not is a matter of investigation; the investigating agency needs to be given an opportunity to investigate by taking the applicant into custody. On perusal of the photographs produced on record, *prima facie*, I am satisfied that the material collected by the investigating officer is lascivious in nature. Therefore, he needs to investigate various angles regarding the persons responsible for

causing such material to be published or transmitted in electronic form, which is not possible without custodial interrogation of the accused. Therefore, I am satisfied that the Applicant has made no case for pre-arrest bail.

11. The Anticipatory Bail Application is, therefore, rejected.

12. At the next stage, the learned Advocate for the Applicant states that this Court had protected the Applicant by way of ad-interim relief. Considering the nature and gravity of allegations made against the Applicant, in my opinion, no case for continuation of ad-interim relief is made out. Therefore, the oral Application for continuation of ad-interim relief is rejected.

(AMIT BORKAR, J.)