

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 201/2023

Rupesh s/o Ramesh Thanekar and anr. .vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. B. Barve, Advocate for applicants.

Mr. M. J. Khan, A.P.P. for non applicant no.1-State.

Ms A. Kolhe, Advocate appointed for non applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 18, 2023.

Heard.

2. This is an application under Section 439 of the Criminal Procedure Code, 1973. The applicants have been arrested on 28.10.2022 in Crime No. 554/2022, registered with Police Station, Wadi, Nagpur for the offences punishable under Sections 376(2)(n)(j), 385, 509, 506, 109, 120-B and 201 of the Indian Penal Code, 1860 and Sections 66(E) and 67 of the Information and Technology Act, 2000.

3. Having heard both sides and having gone through the materials placed before me, what transpires is that the applicants are known as brother and sister in the locality, but are not real brother and sister. The First Information Report has been lodged by neighbour of applicant no.2. The informant has alleged that she got acquainted with the applicant no.1 in the year 2019. In June, 2022, when her husband had been to Madhya Pradesh, she (informant) used to talk to the applicant no.2. One day, applicant no.2 called her at her house and said that she may

meet her when her husband is out of town. On 09.08.2022, the applicant no.2 messaged the informant and called her at the house. Applicant no.2 gave some drink to the informant. She felt intoxicated. She regained consciousness after 1-2 hours. During that time, applicant no.1 has committed rape (dushkarm) on the informant. The informant then states that the applicant no.2 has videographed the said incident and started blackmailing her. On 23.08.2022, applicant no.1 called the informant and said that he possesses the obscene video and will show it to the informant's husband. He called her at a place and again committed rape by threatening that if she does not cooperate, he will make the video viral. It is then alleged that the applicant no.1 used to talk to the informant on video call and used to force her to undress her during the call. Thereafter, the informant claims that applicant no.2, by saying that she will make the video viral, demanded money. The informant has paid Rs.10,000/- to her. Thereafter, the informant refused to pay the amount. The applicant no.1 on 26.10.2022, called the neighboring persons and showed them the video. Applicant no.2 has also shown video to the husband of the informant. The informant then states that she does not know anything about the video.

4. Thus, at one place she states that the applicant no.2 has videographed the obscene act of applicant no.1 and the informant and at the other place she states that she does not know anything about the said video.

5. Learned counsel for applicants has invited my attention to the statement of a witness named Sharmila. She states that someone used to give information of whereabouts of applicant

no.2 to applicant no.1. As such, the supplementary statement of informant indicates that it is the applicant no.2, who has instructed the informant to give details of applicant no.1, however, the statement of Sharmila does not speak so, may be because she was unaware of the said fact. The witness then states that to know as to who gave information of whereabouts of applicant no.1 to applicant no.2, the witness and applicant no.2 had been to the house of applicant no.1. They asked applicant no.1 but he did not respond. Applicant no.1 proceeded to get tea. At that time, applicant no.2 checked mobile of applicant no.1. She saw one video. The video was of the informant. It was seen in the video that the informant has willingly shown her chest. The video also reflected the face of applicant no.1 and that applicant no.1 was driving the vehicle (this video shows the applicant no.1 was speaking to informant on video call). The statement of this witness indicates that the applicant no.2 has then captured the said video in her mobile. Thereafter, the witness and applicant no.2 left the place. On the next day, there occurred quarrel between applicant no.2 and the informant. Learned counsel for applicants submits that applicant no.2 got annoyed with the relations of applicant no.1 and informant and therefore quarrel occurred.

6. Be that as it may, the statement of witness indicates that there occurred quarrel between applicant no.2 and informant and the informant asked the applicant no.2 as to what proof she has of her relationship with the applicant no.1 by saying that she does not even possess mobile number of applicant no.1. The informant challenged applicant no.2 to show proof to her (informant's) husband. The informant was

repeatedly calling upon applicant no.2 to show evidence and, therefore, the applicant no.2 called informant's husband by the side and showed the video captured in her mobile. The husband also got annoyed of seeing the obscene video. The husband of informant said to applicant no.2 that his wife is involved in similar such affairs. The husband then asked the applicant no.2 to send the video and said that he will show this video to her relatives as a proof. The applicant no.2, however, did not show the video by saying that she will share the video at appropriate time. The husband then said that the informant was in relationship with one Sameer, whose statement appears to have been not recorded.

7. Learned counsel for applicant has then invited my attention to the supplementary statement of informant. In her supplementary statement, the informant states that on the date of first incident, applicant no.2 called the informant to her place and they had some drink. The informant suffered intoxication. Thereafter she does not know what had happened. After about 15 minutes, she regained consciousness. At that time, applicant no.2 had shown her video in which the applicant no.1 was seen lying on informant having his undergarments on and that the informant was also wearing clothes. Learned counsel for applicant submits that this video is not on record. The informant then states that the applicant no.2 called her thrice by giving message and when she reached her house, she sought Rs.10,000/-. At that time, the informant paid Rs.5,000/- by mortgaging her anklet (payal). The statement then indicates that the applicant no.2 has requested the informant to pay Rs.50,000/-, on which the informant said that she does not have

any money. Thereafter, the video has become viral. The informant then states that the applicant no.2 had instructed her to give whereabouts of applicant no.1 which informant used to do. The reason for the same is not assigned by the informant. The informant then states that at about 01:30 p.m. she had been to applicant no.2's house. Both had drinks. She again felt intoxicated. The applicant no.2 then dropped the informant to her house.

8. Learned counsel for applicants contends that there is discrepancy in supplementary statement vis-a-vis the FIR. Earlier the informant states that applicant no.2, had extorted Rs.10,000/-. In the supplementary statement the informant states that applicant no. 2 sought Rs.10,000/- (without any threats) and that the informant has paid Rs.5,000/-. He further submits that the relation between applicant no.1 and the informant was consensual. The so called obscene video of applicant no.1 and informant is not available. In the FIR, the informant states that the applicant no.1 has committed rape and that the said act was videographed by applicant no.2. In the supplementary statement it is stated that applicant no.2 has taken video showing applicant no.1 lying on the person of informant and that both were having clothes on their persons. This modified version of the informant coupled with the statement of Sharmila is indicative of the fact that the applicant no.2 has not captured any video as alleged and that she has obtained the video from the mobile of the applicant no.1. Upon seeing the video, the applicant no.2 got annoyed of the relations between applicant no.1 and informant. On this count, there occurred quarrel between the two and upon informant's

challenge, the applicant no.2 showed video to informant's husband but in isolation. Thus, he submits that the applicant no.2 is innocent. So far as applicant no.1 is concerned, the Learned counsel for the applicants submits that the story put forth by the prosecution itself is indicative of the consensual relationship between applicant no.1 and the informant.

9. As against, learned A.P.P. for non applicant no.1-State and the learned counsel for non applicant no.2, have vehemently opposed the application firstly on the ground that the earlier application filed by applicants has been withdrawn when the Court shown its disinclination to grant relief, vide order dated 13.12.2022 passed by this Court (Coram: Anil S. Kilor, J.). However, this Court has granted liberty to move after filing charge-sheet. Thus, it appears that in view of the change in circumstance, the applicants have filed the present application. The charge-sheet has been filed, statement of witnesses are on record. In that sense, the prosecution story supported by the witnesses is before the Court and the same is being considered in the present application.

10. Secondly, it is submitted that the entire crime has been predetermined and well planned act of the applicants. The applicant no.2 has allegedly captured video of applicant no.1 and informant and thereafter blackmailed her and extorted an amount of Rs.10,000/-. The said video has been shown to the neighboring witnesses when the informant refused to pay the money.

11. Having given thoughtful consideration to the submissions made by both the sides, the video that has been allegedly captured on the first day is not before the Court. Thus, the claim of the informant that while the applicant no.1 has committed rape, applicant no.2 has captured the incident in a video, is not supported by any evidence. The submission that the applicant no.2 has extorted an amount of Rs.10,000/- has been to certain extent neutralized in the supplementary statement. The video that has been allegedly shown to the witness appears to be video of applicant no.1 and informant talking to each other on video call. It appears that the informant has willingly shown her chest to the applicant no.1. This video has been captured by applicant no.2 in her mobile from the mobile of applicant no.1 and has allegedly shown to the husband of the informant upon challenge made by the informant to the applicant no.2 to show proof of her relationship with applicant no.1. This video has not been shown by applicant no.1 to anyone. Further, despite there being earlier incidents of administration of some substance, it appears that the informant had again visited the house of the applicant no.2. The said fact indicates that the informant had been to the house of the applicant no.2 willingly and has consumed some drinks knowing fully well that it has an element of intoxication. Thus, there appears flip side of the story.

12. As such, the prosecution will get an opportunity to put forth its version before the trial court which will be tested by defence in the cross-examination, however, the advantage of aforesaid discrepancy would go in favour of the applicants, for the purpose of releasing them on bail.

13. When inquired of antecedents, learned counsel for the applicant submits that there was one case filed against applicant no.1 in which he has been acquitted. Thus, there are no criminal antecedents against both the applicants. The applicants is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

14. In view of the above and considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicants in jail. The interest of the prosecution can be protected by putting the applicants to appropriate terms.

15. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

16. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant no.1-Rupesh Ramesh Thanekar and applicant no.2 Laxmi alias Reena Sachin Lade, be released on bail in Crime No. 554/2022, registered with Police Station, Wadi, Nagpur for the offences punishable under Sections 376(n)(j), 385, 509, 506,

109, 120-B and 201 of the Indian Penal Code, 1860 and Sections 66(E) and 67 of the Information and Technology Act, 2000, on they executing P.R. Bond in the sum of Rs.25,000/- each with one surety each in the like amount.

(iii) The applicants shall, at the time of execution of bond, furnish their addresses and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicants shall not contact the informant in any manner.

(iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicants shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicants shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

Professional charges of Ms Apurva Kolhe, learned appointed counsel for the non applicant no.2 shall be paid as per the rules.

(Anil L. Pansare, J.)