

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.649 OF 2023
(Sahil Sayyed Khurshid Vs. The State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Mardikar, Sr. Advocate a/b Shri V.R. Deshpande, Advocate
for the applicant.
Shri S.M. Ghodeswar, APP for the State.
Shri N.D. Dawda, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 02, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.66/2023 registered at police station Koradi, Nagpur for the offence punishable under Sections 494, 376(2)(n), 420, 323, 504 and 506 read with Section 34 of the Indian Penal Code along with Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

3. The applicant is arrested on 09/03/2023. Since then he is in jail.

4. The accusation is made against the present applicant on the basis of report lodged by the victim who has alleged that she got acquaintance with the present applicant as she was serving in one KRIMS Hospital wherein father of the applicant was admitted. Thereafter

friendship was developed between them which resulted into the love relationship. Thereafter present applicant promised her for marriage and asked her to convert herself in Muslim community. It is further alleged that he has performed marriage with the informant on 27/06/2018. Though they got married with each other but they were residing separately at their respective houses. The informant further alleged that on 15/07/2019 and 12/10/2019 she was beaten by the present applicant though there was divorce between them on 03/08/2019. She further alleged that the applicant has subjected her for sexual assault, obtained the video of the obscene events between their sexual relationship and threatened her to make it viral. On the basis of said report, police have registered the crime against the present applicant.

5. As per the contention of the present applicant with the false and frivolous allegations he is implicated. In fact, the informant attempted to grab the flat owned by him and when applicant has opposed the same, she filed false complaint. It is further contention of the applicant that as far as the allegation regarding the assault at his hands is concerned, no complaints are lodged by the victim. Now, the investigation is completed and the charge-sheet is filed. His mobile phone is already seized by the police. Further custodial interrogation of the present applicant is not required and hence, he be released on bail.

6. Said application is strongly opposed by the State on the ground that during the course of investigation it reveals that not only the present applicant but another woman beside the wife is also exploited and assaulted by the present applicant. He is a habitual offender and several cases are pending against him. If he is released on bail there is every likelihood that he would cause harm to the person and property of the victim. In view of that application deserves to be rejected.

7. The victim has also opposed the application by filing written submission on record and reiterated the contention that the victim is not only assaulted by the present applicant but he has obtained the obscene videos and threatened her to circulate the same on social media. If applicant/accused is released on bail he would cause harm and there is every likelihood of causing injury to the person of the victim as well as her children and prays for rejection of the application.

8. Heard Shri A.S. Mardikar, learned Senior Counsel for the applicant. He reiterated the contention and invited the attention towards the recitals of the FIR. He submitted that victim is already a married lady. There was no divorce decree between her and her husband. During the subsistence of first marriage, she got married with the present applicant. He placed on record the case details which shows that divorce petition between the victim and her husband was disposed of on 21/06/2023. After going through the investigation papers, it reveals

that during investigation the Investigating Officer has recorded various statements. Admittedly, as far as the allegation regarding the assault by the present applicant is concerned on various dates narrated by the victim i.e. on 27/07/2018 and 12/10/2019. There is no complaint to the police regarding the said assault. As far as the incident dated 12/10/2019 is concerned, she was assaulted outside the premises that is building Hitesh Heights. However, during investigation none of the independent witness came forward to support the said allegation. The Investigating Officer has also collected the various documents including the agreement between the present applicant and the victim whereby it is admitted by the victim that there was friendship between her and the present applicant. The said friendship resulted into the love relationship and out of the said love relationship they came together. However, due to some differences, they have decided to separate from each other and executed one agreement. Present applicant has also agreed in the said agreement that he will not interfere in the personal life of the victim and would not quarrel or threat to her person on any other means. There is one leave and licence agreement also but it is in respect of Flat No.L/62, Block Sector, LIG Colony, Vaishali Nagar, Nagpur. The brother of the present applicant is also co-accused and the Partnership Deed between the brother of the present applicant and the victim is also collected during investigation which shows that they have started business

together. After filing of the report, she was referred for the medical examination. During medical examination, Medical Officer has specifically observed that after one month of the alleged incident, she is examined and no injuries are found on her person. As far as the allegation against the present applicant regarding the sexual assault with the victim and the another woman is concerned, it is supported by the statement of that another victim also. The statement further shows that the present applicant has obtained the video regarding the sexual activities between him and the victim girl and shown to the said witness (name of the witness is not mentioned as she is also one of the victim at the hands of the present applicant).

9. It is pertinent to note that after the differences between them and after they have obtained the divorce, again victim was having relationship with the present applicant which is apparent from the recitals of the FIR. Thus, *prima facie* after going through the investigation papers, it is apparent that there was a physical relationship between victim and the present applicant by the consent of the victim. The recitals of the agreement and statement of the victim also shows that there was consensual relationship between them and out of the consent there was a physical relationship between them. There appears to be some money transactions between them also. Admittedly, there is a *prima facie* material against the present applicant to connect him with

the alleged offence. There are criminal antecedents also against the present applicant. However, the victim is also one of the accused in some offences which are registered against the present applicant. Now, investigation is completed and charge-sheet is filed. The Investigating Agency has already seized the mobile phone. The Forensic Lab report regarding the examination of the mobile phone is yet to be received.

10. Considering the nature of the relationship between the victim and the present applicant, the application deserves to be allowed by imposing certain stringent conditions. In view of that, I proceed to pass following order :

(i) The application is allowed.

(ii) The applicant - Sahil Sayyed Khurshid in Crime No.66/2023 registered at police station Koradi, Nagpur for the offence punishable under Sections 494, 376(2)(n), 420, 323, 504 and 506 read with Section 34 of the Indian Penal Code along with Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, be released on bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not stay in a Nagpur district till decision of this trial except

attending the date in the Court during the trial.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence and shall not contact with the victim, in any manner.

(v) The applicant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

(vi) On contravention of any of the condition the bail granted to the present applicant deserves to be cancelled

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*