

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

ANTICIPATORY BAIL APPLICATION NO.1217 OF 2024

Rahul Jayprakash Patil

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Anil C. Singh, Senior Advocate a/w Sandesh D. Patil i/b. Prithviraj Gole, Advocate for Applicant.
- Mr. Avinash A. Naik, APP for the State/Respondent.
- Mr. Vivek Gore, Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd MAY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.152/2024, dated 04/04/2024, registered with Mira-Bhayander, Vasai-Virar Police Station, Bhayander, under sections 376(2)(n) and 506 of the Indian Penal Code.

2. Heard Mr. Anil C. Singh, learned Senior Counsel for the Applicant, Mr. Vivek Gore, learned counsel for the Intervenor and Mr. Avinash A. Naik, learned APP for the State.

3. The FIR is lodged by the victim herself. She was 27 years of age. She had lost her father. She was staying with her mother and two younger sisters. She was working at Mumbai Airport. She has stated that she was knowing the present Applicant since 2017. They got acquainted in one picnic through a common friend. The informant has categorically stated that since 2017 upto August 2020, they were just friends. After that, the Applicant told her that he loved her and he wanted to marry her. He proposed marriage to her. At that time, the informant told him that his family might not accept their relationship and she had turned down his proposal. Even thereafter, they were constantly in touch. She lost her father in October 2020. At that time, the Applicant supported her. It is mentioned in the FIR that by October end, the same year the Applicant came to her house and told her mother that he wanted to marry the informant. The informant's mother told him to inform his family about this proposal. The FIR thereafter mentions that in November 2020, on one occasion, the informant was alone in the house. The Applicant called her and made enquiries. He came to her house.

It is alleged that he tried to get physical with her. She opposed. But the Applicant told her that he loved her and that he would marry her. On this representation, he established physical relations with her. It is specifically mentioned in her FIR that he captured the photographs and video recording of their act. After that, he threatened the informant that he would make those photographs and video viral and then he left. The FIR thereafter mentions that on 16/11/2020, the Applicant called her to a hotel and threatened her that he would make the video viral and on that threat he had physical relations again. The FIR thereafter mentions various instances when they had physical relations. According to her, it was against her wish. She had given the dates from 29/11/2021 upto 31/12/2023.

4. Learned Senior counsel for the Applicant submitted that there are WhatsApp chats between the informant and the Applicant. Those chats are from November 2020 onwards till January 2024. All these chats demonstrate that they were in a love relationship. In fact, on many occasions, the informant had sent messages to the Applicant saying that she loved him.

Learned Senior counsel therefore submitted that if the relationship was kept under the threats of making the videos viral, then she would not have sent those messages expressing her love to the Applicant. He submitted that it was not a case of false promise, but the Applicant had approached the informant's mother and had expressed his desire to marry her. Therefore, it cannot be said that the Applicant had no intention to marry her.

5. Learned APP produced the investigation papers before me and opposed these submissions. He particularly relied on the Panchanama dated 11/04/2024, in which the informant had produced her mobile phone before the investigating agency. The phone was unlocked and there were 13 objectionable photographs and videos supporting her allegations.

6. Learned APP on instructions of the Investigating Officer, who is present in the Court states that those videos and photographs are in respect of actual physical act between the informant and the Applicant.

7. He therefore submitted that section 67A of the Information Technology Act, 2020, is also made out though it is not mentioned at the time of lodging the FIR. He submitted that the allegations are serious. The offence is serious.
8. Learned counsel for the first informant submitted that the informant had trusted the Applicant, but he took advantage of her trust and shot those videos and photographs. Those videos and photographs were sent by him on google drive and on the informant's mobile phone. He submitted that this clearly shows that there is truth in the allegations of the informant that she was blackmailed and was forced to have physical relations with the Applicant.
9. I have considered these submissions. While it is true that the WhatsApp chats relied on by the learned Senior Counsel show that the informant herself had expressed her love for the Applicant. However, the allegations made in the FIR that the Applicant had shot their intimate videos and photographs; are supported by the Panchanama carried out during the

investigation as mentioned earlier. The FIR itself mentions that the informant at the first instance itself had expressed her doubt about the Applicant's family giving consent for their marriage. In spite of that the Applicant had assured her of marriage and thereafter their physical relations continued. Subsequently, after about 3 years, the Applicant refused to marry her and then this FIR is lodged. What is disturbing in these entire allegations is about recording of the videos and photographs and the fact that those videos and photographs were sent by the Applicant to the informant. It supports the case of the informant in the FIR that the Applicant was using those photographs and videos.

Section 67A of the Information Technology Act, 2020, reads thus :

“Section 67A - Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five

years and with fine which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

10. It is a serious offence. The photographs and videos were captured by the Applicant on his mobile phone and thereafter they were transmitted by him out of his mobile phone. The ingredients of section 67A are made out in this particular case. Thus, as mentioned earlier, these videos and photographs bring the case of the informant closer to support her allegation in the FIR. The Applicant's subsequent conduct also indicates that his intention to marry her was not honest right from the inception. Considering the gravity of the offence, it is not possible to protect the Applicant u/s 438 of Cr.P.C. His custodial interrogation is necessary. The application is therefore rejected.

(SARANG V. KOTWAL, J.)