

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

BAIL APPLICATION NO. 1964 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Javed Aziz Patel

...Applicant

Versus

The State of Maharashtra and ors.

...Respondents

Mr. Murtaza Nazmi, a/w Ashish Dubey, i/b Akhilesh Dubey,
for the Applicant.

Ms. Gauri Rao, APP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.

Reserved On: 6th MAY, 2024

Pronounced On: 9th MAY, 2024

ORDER:-

1. The applicant, who is arraigned in CR No.18 of 2023, registered with MIDC Police Station, Mumbai, for the offences punishable under Sections 376, 376(2)(n), 377, 500 and 506 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 66E and 67 of the Information Technology Act, 2008, has preferred this application to enlarge him on bail.

2. In the year 2015, the first informant became acquainted with the applicant as they both were working in the same company at Andheri. Proximity developed between the applicant and the first informant. After about three months, the first informant alleged, the applicant proposed to her. In the month

of March, 2016 the applicant allegedly had sexual intercourse with the first informant by giving a promise that he would marry her. Thereafter, the applicant allegedly had sexual intercourse with the first informant repetitively by giving promise of marriage at various places.

3. In the year, 2019, the first informant learnt that the applicant was already married. Thereupon the first informant declined to continue the relationship with the applicant. However, the applicant coerced the first informant to continue to have relationship by giving threat of making the objectionable videos viral. The first informant alleged that as the harassment increased, she lodged report in writing with Sakinaka Police Station. On 17th December, 2020, the applicant had allegedly forwarded an objectionable video involving the applicant and the first informant, to the first informant.

4. After the marriage of the first informant was settled with another person, the applicant contacted the latter and informed him that there were physical relations between the applicant and the first informant and threatened him not to marry the first informant. Eventually the first informant solemnized marriage with the said person on 2nd December, 2022. Thereafter, the first informant lodged report on 9th January,

2023. The applicant came to be arrested on 10th January, 2023.

5. Mr. Nazmi, the learned Counsel for the applicant, submitted that the applicant and the first informant were in a relationship for seven years. The first informant was fully aware about the marital status of the applicant and yet the relationship continued. In fact, the dispute arose between the applicant and the first informant as the latter demanded money, which was allegedly paid to the applicant. Inviting the attention of the court to the transcript of the conversation, it was submitted that despite the alleged disclosure of the marital status of the applicant in the year, 2019, the relationship continued. Mr. Nazmi laid emphasis on the fact that in the complaint, in writing, which was lodged with Sakinaka Police in the month of May, 2020, the allegations of forcible sexual exploitation were not made and, instead, the complaint was primarily made to recover the amount from the applicant.

6. Ms. Rao, the learned APP for the State, submitted that the initial relationship might have been consensual. However, when the first informant became aware of the marital status of the applicant and the fraud played by the applicant, she attempted to discontinue the relationship and thereupon the applicant

harassed the first informant. Taking the Court through the transcript of the Whatsapp conversation between the applicant and the first informant, Ms. Rao, would urge that there were numerous incidents of the applicant abusing and threatening the first informant. It was submitted that the statements of the husband of the applicant indicates the level to which the applicant has stooped to destroy the marital life of the first informant. Therefore, the applicant does not deserve to be enlarged on bail.

7. I have given anxious consideration to the rival submissions. Evidently, the applicant and the first informant were in a relationship since the year 2015. The said relationship lasted for more than five years, in the least. The first informant alleges that there were repeated incidents of sexual exploitation by giving a promise of marriage. The first informant, at the time of the first incident appeared to possess sufficient maturity of understanding to know the nature and consequences of the act. *Prima facie*, it would be difficult to accept the allegations in the FIR, that the consent for those acts was given by the first informant under misconception of facts. *Prima facie* it also appears that even after the first informant came to know about the marital status of the applicant, in the year 2019, the

relationship between the applicant and the first informant continued. In these circumstances, the complicity of the applicant for the offences punishable under Sections 376, 376(2) (n) and 377 of the Penal Code *prima facie* appears debatable.

8. The learned APP laid thrust on the conduct of the applicant post the applicant and the first informant allegedly parted ways. There is material to indicate that the applicant had allegedly called the prospective husband of the first informant and apprised him about his relationship with the first informant and also threatened him that he should not marry the first informant. The first informant also seems to have lodged the complaint, in writing, in the month of May, 2020 regarding the harassment at the hands of the applicant.

9. The transcript of the WhatsApp conversation between the applicant and the first informant, however, is required to be appreciated as a whole. On one hand, it indicates that the applicant insisted for the continuation of the relationship. On the other hand, it reveals that, the first informant desired to discontinue the relationship and also insisted for the refund of money which she claimed to have paid to the applicant. Even in the complaint lodged with Sakinaka Police Station in the month

of May, 2020, there is reference to the said financial transactions.

10. The situation which thus *prima facie* obtains is that there is material to show that the applicant was pursuing the first informant even after she declined to continue their relationship. The applicant, in a sense, appeared to be possessive of the first informant. Though there are allegations that the applicant threatened to make the videos of the involvement of the applicant and the first informant viral yet, it is imperative to note that, the first informant alleges that the photos were sent by the applicant to her alone. It does not appear that the prosecution has collected the material which shows that the videos and photos were shared by the applicant with others.

11. In the aforesaid view of the matter, especially having regard to the longstanding relationship between the applicant and the first informant, and the fact that the investigation is complete for all intent and purpose, further detention of the applicant is not warranted. Therefore, I am inclined to exercise discretion in favour of the applicant. The apprehension on the part of the prosecution can be taken care of by imposing stringent conditions.

12. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail CR No.18 of 2023, registered with MIDC Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the MIDC Police, Mumbai, between 10.00 a.m. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not contact to the first informant, her husband and her relatives and shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) The applicant shall file an undertaking before the Court of Session that he will abide by the aforesaid conditions within a period of two weeks from the date of his release from prison.
- (viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]