

Sayali Upasani

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

BAIL APPLICATION NO.- 3972 OF 2023

Mohd. Irfan Yunus @ Irfan Khan

... Applicant

Vs.

**SAYALI
DEEPAK
UPASANI**

State of Maharashtra and Others

...Respondents

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2024.05.06
10:15:40 +0530

Ms. Anjali Awasthi, for Applicant.

Mr. Tanveer Khan, APP for State/Respondent.

Mr. Khan Amir, for Respondent No. 2.

CORAM:- N. J. JAMADAR, J.

DATED:- 30th APRIL, 2024.

PC:-

- 1)** Heard the learned Counsel for the parties.
- 2)** Mr. Khan Amir, the learned Counsel, submits that he has instructions to appear on behalf of the respondent No. 2, who is present in Court.
- 3)** The learned Counsel undertakes to file Vakalatnama on behalf of the respondent No. 2.

4) The learned Counsel also seeks leave to tender an affidavit on behalf of respondent No. 2.

Leave granted.

5) Affidavit is taken on record.

6) The indictment against the applicant is that in the month of June, the applicant developed friendship with the first informant – respondent No. 2 by approaching her through MICO App and sexually exploited her by giving a promise of marriage. The applicant had allegedly exploited the first informant in the month of April, 2023. Thereafter, the applicant went away to Dubai. Hence, the first informant lodged the report on 1st May, 2023.

7) The learned Counsel for the applicant submitted that the relationship between the applicant and the first informant was consensual. As their relationship turned sour, the first informant lodged the report.

8) In the affidavit, the first informant – respondent No. 2 affirms as under:-

2. I file this brief affidavit to support the case of the Applicant/accused and for giving his no objection for bail in FIR No. 310 of 2023 did. 01.05.2023, for offence u/s. 376. of IPC against the Accused registered at Juhu Police Station.

3. I say that, I express my desire to not to proceed further with the prosecution of the accused. FIR was registered due to misunderstanding and fit of anger. Moreover, when I learnt that the applicant's father has suffered various ailments due to the arrest of

his son, I considered to give my no objection for bail and thus I am withdrawing all my allegations against the applicant.

4. I say that when I realized that there is a bail application filed by the accused before this Hon'ble Court, I am approaching this Hon'ble Court out of my own will, without any pressure or coercion from anyone and I state that I have no objection if the accused is enlarged on bail. I say that there was no any damage to my life or limb.

5. I say that we have settled the issues amicably and I have no grievance against the accused,

6. I say that the I am intending to file joint Petition for quashing of the case by consent before this Hon'ble Court as I am withdrawing all the allegations made by me in the FIR and I no objection if the case is quashed by this Hon'ble Court..."

9) The Court is informed that a Petition for quashing of the FIR by consent of the parties has been filed and it is scheduled to be listed in the next week.

10) The first informant appears to be a lady with sufficient maturity of understanding. In the circumstances of the case, whether the consent of the first informant for the sexual act was vitiated on account of misconception of facts, would be a matter for adjudication at the trial.

11) Since the first informant has filed an affidavit giving consent for the grant of bail on the premise that the dispute between the parties has been amicably resolved and a Petition for quashing of the FIR by consent of the parties has already been filed, I am inclined to release the applicant on bail.

12) Hence, the following order:-

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No. 310 of 2023 registered with Juhu Police Station, for an offence punishable under Section 376 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned trial Court.
- (iii) The applicant is permitted to furnish cash security in lieu of surety for a period of four weeks.
- (iv) The applicant shall mark his presence at Juhu Police Station, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.
- (v) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]