

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.269 OF 2024

Rony Augustine Nunis ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1712 OF 2024
IN
BAIL APPLICATION NO.269 OF 2024

Ms. Apeksha Vora for Applicant.

Mr. S. R. Agarkar, APP for Respondent-State.

Mr. Sushil Mishra a/w. Mr. A. Dubey and Ms. S. Singh i/b. Mr. Pramod Pandey
for Applicant in IA/1712/2024.

CORAM : MANISH PITALE, J.

DATE : JULY 30, 2024

P.C. :

. Heard Ms. Vora, learned counsel appearing for the applicant, Mr. Agarkar, learned APP appearing for the respondent-State and Mr. Mishra, learned counsel who has filed an intervention application in the present proceedings.

2. In the present case, the applicant was arrested on 05.06.2022 in connection with FIR No.1445 of 2022 dated 03.06.2022 registered with Sakinaka Police Station, Brihanmumbai, for offences under Sections 376(2)(n), 341, 501 and 506(2) of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered on the statement of the informant dated 03.06.2022, wherein she alleged that the applicant had sexual relations with her, concealing the fact that he was married. The relationship, according to the informant, started in April 2021 and in June 2021, she became aware about the fact that the applicant was married. Thereupon, according to the informant, the applicant promised her that he would

take divorce from his wife and on 21.10.2021, he did initiate proceedings for divorce. Thereafter, according to the informant, the applicant continued to have relationship with her and eventually, the informant was constrained to approach the police, leading to registration of the FIR.

4. The learned counsel for the applicant submits that after June 2021, when the informant became aware about the marital status of the applicant, the allegation of having continued the relationship under a misconception of facts is not available to the informant. It is submitted that, in the present case, the applicant has been behind bars for more than two years. The charge was framed as far back as on 03.12.2022, but the trial has not progressed allegedly due to non-cooperation of the informant. It is alleged that the informant is not appearing before the trial Court and she is interested only in prolonging the incarceration of the applicant.

5. The learned APP submits that this Court can call for a report from the trial Court as to the status of the trial, but it appears that the trial has not progressed substantially after framing of charge on 03.12.2022.

6. The learned counsel appearing for the informant relies upon contents of the intervention application, particularly documents filed therewith, to contend that the relatives of the applicant have been threatening the informant and if bail is granted to the applicant, there is distinct possibility of the informant being put to danger and being influenced to withdraw the allegations made against the applicant. It is also submitted that during the hearing of the bail application before the Sessions Court, the wife of the applicant had made it clear that she would not be co-operating for the divorce being granted to the applicant. It is further brought to the notice of this Court that although the applicant is a Christian, he deliberately filed proceeding for divorce under the

Hindu Marriage Act, 1955, thereby indicating that he was only misleading the informant and continuing the relationship with her. On this basis, the prayer for bail is opposed.

7. This Court has considered the rival submissions in the backdrop of the material placed on record. A perusal of the statement of the informant, leading to registration of the FIR, shows that even according to her, in June 2021, she became aware about the fact that the applicant was a married man. It is the case of the informant that the relationship till that time was existing for a few months from April 2021 onwards. Thus, at least for the period between April 2021 and June 2021, according to the statement of the informant, she was under an impression that the applicant was not married and she continued to have relationship with him.

8. But, after June 2021, even according to the statement of the informant, she was aware of the fact that the applicant was a married man and this is further evident from the fact that according to her, on 21.10.2021, the applicant filed proceedings before the Court for taking divorce from his wife. The further instances of sexual relations between the applicant and the informant *prima facie* do not fit into the case of the informant that, she had such relations with the applicant under a misconception of fact that he was an unmarried man. Thus, *prima facie*, the said misconception of facts for the informant existed between April 2021 and June 2021. The FIR was registered on 03.06.2022 i.e. a whole year after the misconception of fact, if any, had disappeared.

9. Apart from this, it is difficult to understand as to how the applicant can claim that the relationship continued between her and the applicant on the basis of a misconception, which existed from April 2021 onwards. Even if the case of the informant is to be accepted that the applicant had promised her that he would divorce his wife and

thereafter marry her, the fact that he was a married man had come to light in June 2021 and this is a fact, which stares the Court in the face. *Prima facie*, the FIR appears to have been registered after a delay of about one year. It is an admitted position that the applicant has remained behind bars from 05.06.2022 i.e. for a period of more than two years. The charge, in the present case, was framed as far back as on 03.12.2022 and yet there is no progress in the trial. This Court is not inclined to call for a report from the trial Court as to the progress of the trial, since the learned counsel for the informant has tendered photocopies of orders / proceedings of the trial Court from 28.05.2022 onwards. It appears that the proceedings before the trial Court have been adjourned on the ground that the accused was not produced from judicial custody. But, it is significant that in the proceeding dated 23.07.2024, the witness was to be produced i.e. the informant. It is also recorded in the said proceeding that the witness is absent, further recording that due to paucity of time, the matter has been adjourned. The aforesaid material does indicate that there is no progress in the trial. The apprehension expressed on behalf of the informant that releasing the applicant on bail may adversely affect the prosecution case, as the witnesses and evidence can be tampered can be dealt with by imposing appropriate conditions. The contention raised on behalf of the applicant on the basis that the wife of the applicant had made it clear before the Sessions Court that she would not be co-operating for grant of divorce, is a contention stated only to be rejected.

10. As noted hereinabove, after June 2021, when the misconception of facts, if any, was removed, the debate on whether the applicant applied correctly for divorce or whether he would be granted divorce pales into insignificance.

11. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with FIR No.1445 of 2022 dated 03.06.2022 registered with Sakinaka Police Station, Brihanmumbai, on furnishing P.R. Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall not enter jurisdiction of Sakinaka Police Station during the pendency of trial;
- (C) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (E) The applicant shall not in any manner get in touch with the informant during the pendency of the trial;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

13. The application is disposed of. In view of the disposal of the application, interim application also stands disposed of.

(MANISH PITALE, J.)