

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

CRIMINAL BAIL APPLICATION NO. 2335 OF 2024

1. Rakesh Lochan Paliwal	
2, Himanshu Rakesh Paliwal	..Applicants
Versus	
The State of Maharashtra	..Respondent

Ms. Anjali Patil a/w. Tohid Shaikh for Applicants.
Mr. Shrikant H. Yadav, APP for State/Respondent.
Mr. Abhaykumar Apte, for the First Informant.

CORAM : SARANG V. KOTWAL, J.
DATE : 29 AUGUST 2024

P.C. :

1. The Applicants are seeking bail in connection with C.R.No.130 of 2024 registered at Bangar Nagar Police Station, Mumbai, on 14.02.2024, under sections 376(2)(n), 509, 323, 504 and 506 r/w. 34 of the Indian Penal Code.

2. Heard Ms. Anjali Patil, learned counsel for the applicants, Ms. Shrikant Yadav, learned APP for the State and Mr. Abhaykumar Apte, learned counsel for the first informant.

3. The F.I.R. is lodged by the victim herself. She has

stated that, she was a resident of Mumbai. She was residing with her mother and sister. She was working in a reputed company. In April 2016, her neighbour introduced her to the applicant No.1's son. The applicant No.2 is his other son. The F.I.R. mentions that, for about two and half years the informant and the applicant No.1's son were in friendly relations. According to her, she was suggesting him to get married, but he was avoiding the subject. In 2021, both the applicants and the Applicant No.1's brother approached the informant's family and suggested that, since the Applicant No.1's son was earning satisfactorily, they could go ahead with the marriage. Accordingly, they got married on 25.02.2023. After the marriage, the informant started residing at the applicants' house at Aligarh, Uttar Pradesh. There were two houses. The informant, her husband and the applicant No.2 were residing in one house and the applicant No.1 and his wife were residing in the other house. It is alleged that, in April 2023, the informant's husband forced her to keep physical relations with the Applicant No.2. This happened on more than one occasions. In April 2023, the Applicant No.2 went to Gujarat in connection with

his job. After that the informant's husband used to establish forcible physical relations with her against her wish. In May 2023, her husband forced her to keep physical relations with the Applicant No.1. This went on till September 2023.

4. On 11.09.2023, the informant came to Mumbai in connection with her project and stayed with her mother. Her husband came to take her back on 23.10.2023. She refused. He threatened her and took away gold ornaments and Rs.5 lakhs in cash. In December 2023, both the applicants came to Mumbai to take her back. Both of them threatened her. It is alleged by her that, even on this occasion, the Applicant No.1 established forcible physical relations with her. It is her case that, getting scared, she accompanied them to their house in Uttar Pradesh in December 2023. She has further alleged that, she was not allowed to go out of the house and her husband used to have forcible physical relations with her. On 12.01.2024, she left their house and went to her Aunt's house at Lucknow and then came back to Mumbai. She blocked the contact numbers of her husband and his family, and ultimately, lodged her F.I.R. on 14.02.2024.

5. Learned counsel for the applicants submitted that the allegations in the F.I.R. are absolutely false. The alleged incidents are not only improbable but they are impossible. The informant was an educated lady, employed with a good company and, therefore, she was not helpless. It was not possible that, she would have kept quiet for about 7 to 8 months if the incidents were true. Learned counsel invited my attention to an MOU executed on 11.12.2023 whereby the applicant No.2 was to purchase a premises at Goregaon, Mumbai from the original flat owner. He submitted that the applicants had come to Mumbai in connection with purchasing that flat. The family was trying to get a premises in Mumbai since past few months before December 2023, which is reflected in the messages exchanged between the informant and her husband. She relied on the photographs attached to this application from Page No. 172 onwards. She also relied on the messages exchanged between the informant and her husband which are annexed at Page No.162 onwards. She, therefore, submitted that, these messages and the photographs show that the relations between the informant and her husband and her

husband's family were absolutely normal. She submitted that, if there was even an iota of truth in the allegations, all these messages could not have been exchanged and all those photographs were not possible. She submitted that the applicants are already in custody since 15.02.2024 on these false allegations. The charge-sheet is filed and, therefore, they deserve to be released on bail.

6. Learned APP, as well as, learned counsel for the informant opposed these submissions. They relied on the charge-sheet and the statements of the witnesses including the supplementary statement of the first informant, to oppose this application. Shri. Apte, learned counsel appearing for the informant submitted that, those messages and those photographs showing normal relations were possible since the informant could have tried to compromise the matter with her husband's family for the sake of her marriage. Therefore, she could have sent those messages and she could be seen cordial in the photographs to show her efforts to save her marriage. He submitted that the allegations are very serious and, therefore, bail should not be

granted to the applicants.

7. I have considered these submissions and I have perused the charge-sheet. I have read the messages exchanged between the informant and her husband and I have seen the photographs. Undoubtedly, the allegations are very serious. The question is, whether they are probable in the backdrop of the messages and photographs annexed to this application. There are certain other statements in the charge-sheet viz. statements of the neighbours, the victim's mother and her Aunt. The statements of the neighbours of the informant mention that, in December 2023 both the applicants were seen staying with the informant. Whenever the Applicant No.1 used to go out, he was seen carrying something inside his shirt which could be some firearm.

These statements of the neighbours are quite vague. They are recorded in March 2024. The informant's mother's statement repeats the allegations made by the informant in her F.I.R. She has not said anything throwing any light on the incidents which had taken place in December 2023. She would have been in

a position to describe the events which had taken place in her house. But her statement does not independently corroborate the first informant's allegations.

8. Most importantly, the messages exchanged between the informant and her husband annexed to this application make the allegations doubtful. The messages and the photographs are upto December 2023. All these messages and photographs show that the relations between the informant on one hand and the applicants and their family including the husband were absolutely normal. There were some love messages exchanged between the informant and her husband. The messages exchanged on 11.12.2023 between the informant and the Applicant No.2 also show that she had no grievance against the Applicant No.2. All these photographs and messages are pertaining to the instances after April 2023. It is quite important. All these photographs and messages, in fact, show that the informant's allegations could not be true. The investigating agency has not made any submissions in respect of these photographs and messages. It is difficult to accept Mr. Apte's submission that, the informant could have tried to save

her marriage and, therefore, these messages were sent and the photographs were taken. The messages and photographs show absolutely normal relations between the parties. In this view of the matter, I find force in the submissions of learned counsel for the applicants that the allegations may not be true. In this background, it would not be justified to keep the applicants in custody. They have made out a case for their release on bail. It is made clear that all these observations are made only for the purpose of deciding this application. The Trial Court shall not be influenced by these observations.

9. Hence, the following order :

ORDER

- i) In connection with C.R.No.130 of 2024 registered at Bangar Nagar Police Station, Mumbai, the applicants are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- ii) The Applicants shall not try to contact the

informant or her family and shall not tamper with the evidence in any manner.

iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)