

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2725 OF 2024**

Mudit Deepak Jain ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Murtuza Nazmi a/w. Mr. Chowdhari Moin, i/b. Shamim & Co. for applicant.

Ms. Rutuja A. Ambekar, APP for respondent-State.

CORAM : MANISH PITALE, J.

DATE : 04th JULY, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. During the course of arguments, the learned counsel for the applicant relied upon various grounds to show that the bail application deserves to be granted. It is submitted that the offences registered against the applicant and the co-accused persons show that except Section 67A of the Information Technology Act, 2000 (IT Act), all the other offences are bailable. As regards Section 67A of the IT Act, it is submitted that even if the allegations made by the informant are to be taken on face value, at worst, Section 67A of the IT Act could be said to be *prima facie* made out, which would clearly indicate that the applicant can no longer be kept behind bars. Specific reliance is placed on judgment of this Court in the case of *Pramod Anandrao Dhumal vs. The State of Maharashtra* (AIR OnLine 2021 BOM 35).

3. It is further submitted that the mandatory requirements of Sections 41 and 41A of the Code of Criminal Procedure, 1908 (Cr.P.C.) were not complied with and therefore, the applicant deserves to be enlarged on bail. In that connection, reliance is placed on judgment of the Supreme Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another* [(2022) 10 SCC 51]. It is further submitted that merely because investigation is still going on and the investigating authorities believe that further serious offences can be added, the same cannot be a ground for continued incarceration of the applicant. In this context, reliance is placed on the judgment of this Court in the case of *Kuresh Taherbhai Rajkotwala vs. Union of India* [2007 (209) E.L.T. 347 (Bom.)].

4. On the other hand, the learned APP submitted that the statement of the informant, leading to registration of FIR, sufficiently makes out a strong *prima facie* case against the accused persons for all the offences, including Section 67A of the IT Act. In that regard, case diary was made available for perusal of this Court. A perusal of the photographs that were allegedly sent to the informant showing her morphed nude images, were perused by this Court. The nature of the photographs do make out a *prima facie* case of offence under Section 67A of the IT Act. The distinction sought to be made by the learned counsel for the applicant between “sexual activity” and “lascivious material” to claim that at worst, in the present case, offence under Section 67A of the IT Act, can be made out, cannot be accepted at this stage, looking to the images in the case diary.

5. As regards provisions of Section 41 and 41A of the Cr.P.C. not being complied with, the learned APP relies upon notice issued under Section 41A of the Cr.P.C., which is part of the case diary.

6. Nevertheless, it is necessary for the investigating authority to place material before this Court alongwith affidavit, to demonstrate *prima facie* link between act of sending such morphed images to the mobile numbers of relatives of the informant and the applicant before this Court. While the said act, based on the material presently available on record, indicates involvement of the co-accused person in the said act, the applicant can claim benefit of lack of his involvement in the said act. Insofar as the other act attributed to the applicant is concerned i.e. some of the amount repaid by the informant finding its way to his bank account, such act may be concerned with the other offences registered against the accused persons. But, since the said offences are all bailable, the applicant would be able to claim his right to be enlarged on bail.

7. In order to clarify the position and the material linking the applicant with the alleged offence under Section 67A of the IT Act, the respondent-State, through the Investigating Officer, shall file affidavit with such material on or before 18.07.2024, with an advance copy being served on the learned counsel for the applicant.

8. List on 22.07.2024 High on Board.

(MANISH PITALE, J)

Digitally
Signed by
PRIYA KAMBLI
Date: 22.07.24
Time: 12:24:04
eScriber
Priya Kambli