

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

BAIL APPLICATION NO. 2725 OF 2024

Mudit Deepak Jain	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Murtaza Nazmi a/w Mr. Prabhat Upadhyay for the Applicant.
Ms. Rutuja Ambekar (through V.C.), APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 25th JULY 2024**

P.C. :

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

2. The applicant has moved the present application seeking bail as he was arrested on 22nd June 2024 in connection with FIR No.0003 of 2024 dated 2nd January 2024 registered at Bangar Nagar Police Station, Brihanmumbai, for offences under Sections 354A, 354D and 507 of the Indian Penal Code, 1860 (IPC) and Section 67A of the Information Technology Act, 2000 (IT Act).

3. This application was heard on 4th July 2024 and contentions raised on behalf of the applicant were recorded. The hearing was adjourned in order to grant an opportunity to the Investigating Authority to place before this Court material linking the applicant with the offence under Section 67A of the IT Act, as the said

offence appears to be the only offence which is non-bailable, while the other offences registered against the accused persons are bailable.

4. The respondent-State has placed on record an affidavit, along with documents, to oppose the prayer made in the present application.

5. In the light of the material now available on record, the learned counsel for the applicant has made the following submissions :

- (a) In the present case, the applicant is not named in the FIR, as the same is registered against unknown person.
- (b) The mobile numbers from which morphed nude photographs were sent to the informant and her sister, cannot be linked with the applicant. In this connection, attention of this Court is invited to a seizure *panchanama* dated 22nd June 2024, whereby mobiles phones were recovered from the applicant and the co-accused person Lavneet Naresh Kumar. The mobile numbers do not tally with the specific mobile numbers stated in the information given by the informant, as regards the offence under Section 67A of the IT Act.
- (c) In the present case, mandatory requirement of the giving notice under Section 41A of the Code of Criminal

Procedure, 1973 (Cr.P.C.) was not followed. The applicant was simply arrested on the statement allegedly given by the co-accused person. A notice under Section 41A of the Cr.P.C. was issued subsequent to the arrest of the applicant, which violates the position of law reiteration by the Supreme Court in the case of *Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., (2022) 10 SCC 51*.

- (d) The requirement of law specified in the aforesaid judgment as regards satisfaction to be recorded by the Magistrate concerning the reasons for arrest shown by the Investigating Officer, has also been violated, considering the order dated 22nd June 2024 passed by the Chief Metropolitan Magistrate (SW) i.e. the Competent Court at New Delhi.
- (e) The only factor that the respondent can claim as linking the applicant with the present case is that an amount of Rs.5,200/- was credited to the account in the name of the applicant, but the same is also not relevant for the offence under Section 67A of the IT Act.
- (f) It is submitted that the applicant is ready to further cooperate with the investigation and that he shall abide by all conditions that may be imposed by this Court, while allowing the present application.

6. On the other hand, the learned APP has vehemently opposed the present application and the following submissions are made :

- (a) The offence in the present case is serious. The informant was duped by the accused persons and when she was unable to return the loan amount, morphed nude photographs of the informant were sent to her and her sister. Threats were also given to the father of the informant.
- (b) The co-accused person specifically named the applicant as having consented to open the bank account, wherein the mobile number of the co-accused person was linked, thereby indicating that the applicant was all along aware about the *modus operandi* adopted in the present case. A number of innocent persons have been duped by such persons by adopting a similar *modus operandi* and therefore, investigation is necessary.
- (c) The mobile numbers from which the morphed nude photographs of the informant originated are all international numbers with sim cards concerning United Kingdom, Pakistan and Kazakhstan. This indicates that the applicant may be involved in an international racket, requiring further investigation and hence, his custody.
- (d) Although, it is conceded that the notice under Section 41A of the Cr.P.C. was not issued at the appropriate time to the

applicant, but, it is submitted that considering the seriousness of the matter and the necessity of conducting proper investigation, further custody of the applicant is justified.

- (e) There is every possibility of the applicant not being available if bail is granted, as he is a resident of Delhi and offences have been registered at Bangar Nagar Police Station at Mumbai.

7. This Court has considered the rival submissions in the backdrop of the material available on record, particularly documents filed along with the affidavit filed on behalf of the respondent-State.

8. A perusal of the documents filed with the reply affidavit sufficiently make out a *prima facie* case regarding offence under Section 67A of the IT Act. The other offences being bailable, the focus in the present case is on the said offence and as to the material available on record to link the applicant with the said offence. The seizure *panchanama* dated 22nd June 2024 at Exhibit 'F' along with the reply affidavit, shows that two mobile phones were recovered from the applicant and co-accused Lavneet Naresh Kumar. The sim cards recovered from the said mobile phones indicate that the mobile numbers are not mentioned in the statement of the informant, leading to registration of the FIR. This indicates that the said mobile numbers cannot be said to be

associated with the morphed nude photographs of the informant received by her and her sister. The mobile numbers stated in the statement of the informant appear to be concerned with United Kingdom, Pakistan and Kazakhstan, which is obviously a matter of further investigation by the Investigating Authority.

9. Nonetheless, as on today, the material on record falls short of establishing a link between the said morphed nude photographs of the informant being sent to her and her sister, with the applicant. Much emphasis is placed on the document at Exhibit 'B', which *prima facie* shows that part of the amount returned by the informant was deposited in the bank account of the applicant. The mobile phone linked with the said bank account was traced to the co-accused Lavneet Naresh Kumar. This has to be appreciated in the backdrop of the allegation of the informant that she had taken cash loan from an App, which was installed in the mobile. A total amount of Rs.37,300/- was taken as loan and according to the informant, she was able to return Rs.10,600/-. Part of the said amount i.e. Rs.5,200/- went into the account of the applicant. It is the case of the informant that as she was unable to return the entire amount, her father received threatening calls and subsequently, her morphed nude photographs were sent to her sister and thereafter, to the informant herself.

10. Even if the document at Exhibit 'B', showing that the amount of Rs.5,200/- found its way to the bank account of the applicant is to be taken into consideration, that in itself cannot be

the basis to link the applicant with the offence under Section 67A of the IT Act. Therefore, this Court is of the opinion that as on today, the applicant has made out a *prima facie* case to claim that he cannot be linked with the aforesaid offence.

11. Apart from this, the material on record also indicates that the order dated 22nd June 2024 passed by the Competent Magistrate at New Delhi, *prima facie* does not satisfy the requirements of law as laid down in paragraphs 8.2 to 8.4 of the judgment of the Supreme Court in the case of ***Arnesh Kumar v/s. State of Bihar, (2014) 8 SCC 273***. This position was reiterated in the aforementioned judgment of the Supreme Court in the case of ***Satender Kumar Antil*** (supra).

12. Additionally, a case is indeed made out by the applicant in his favour to claim that the requirement of Section 41A of the Cr.P.C. reiterated in the case of ***Satender Kumar Antil*** (supra), is also not scrupulously followed in the present case. The applicant appears to have been arrested straightaway upon the co-accused Lavneet Naresh Kumar being taken into custody and upon alleged statement given by him.

13. Therefore, this Court is inclined to allow the present application. The apprehension expressed by the respondent-State, as regards continued availability of the applicant, can be addressed by imposing appropriate conditions, while granting reliefs to the applicant.

14. 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.0003 of 2024 dated 2nd January 2024 registered at Bangar Nagar Police Station, Brihanmumbai, on furnishing P.R. Bond of Rs.50,000/- and one or two local sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall report to Bangar Nagar Police Station, Brihanmumbai, on 2nd and 4th Monday of each month between 10:00 a.m. and 12:00 noon, till filing of charge-sheet. The applicant shall cooperate with the investigation and shall remain present before the Investigating Officer as and when called.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

15. Needless to say, in case of violation of any of the aforesaid

conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application is disposed of.

MANISH PITALE, J.