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

BAIL APPLICATION NO. 2532 OF 2024

Yogesh Sunil Bhadra @ Bhanushali

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondent

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- Mr. Sunny A. Waskar a/w Mr. Harshada V. Morey, Mr. Shamish Marwadi, Advocates for the Applicant.
- Ms. Rajeshree Newton, APP for Respondent No. 1 – State.
- Mr. Rafiq Gori a/w Ms. Afin Pathan, Advocate for Respondent No.2.
- Mr. Shrikant Korewar, PSI, Malwani Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2025

P.C.:

1. This is an Application under Section 439 of CrPC¹ seeking Regular Bail in connection with F.I.R.² No. 1288 of 2023 registered with Malwani Police Station, Mumbai on 03.10.2023 for offences punishable under Sections 376, 376(2)(n), 377, 354, 509, 323, 504, 506 and 420 of IPC³.

2. The backdrop of prosecution story is that in May 2022, the Applicant aged 30 years met the First Informant - prosecutrix aged 23 years on social media platform 'Instagram'. They both started to converse regularly on call and also used to chat on 'WhatsApp' platform. It was during one of such conversations that the Applicant

¹ Code of Criminal Procedure, 1973

² First Information Report under Section 154 of CrPC

³ Indian Penal Code, 1860

expressed his love towards the prosecutrix and also his desire to marry her. The response to the confession was kept in abeyance by the prosecutrix citing her aspiration to focus on her career. In June 2022, Applicant called the prosecutrix to his home in Malad since he wanted her to meet his family members to which the prosecutrix obliged. It was after the said meeting, Applicant insisted her to stay back since she had to travel a long distance to reach her home at Silvasaa.

2.1. It is the prosecution case that the Applicant on the night of the said date indulged in physical relations with prosecutrix against her wish and also captured obscene images of the prosecutrix on his mobile phone.

3. It is also the prosecution case that the Applicant used obscene photographs of prosecutrix as a leverage to engage in physical relations with her on subsequent multiple occasions by calling her to Vapi, Palghar, Borivali and Malad and she obliged. It is prosecution case that Applicant borrowed money from prosecutrix on multiple occasions. It is stated in the FIR that in August, 2022 Applicant asked for her gold chain which she handed over to Applicant however on 19.08.2023 i.e. almost after a year Applicant called the prosecutrix to collect her gold chain from his house. It is stated that on reaching his residence Applicant abused and banged her head to the wall and forcefully had physical relationship with her. It is prosecution case that

Applicant's paternal aunt informed prosecutrix that multiple FIRs were lodged against the Applicant. Hence she filed the present FIR on 03.10.2023.

4. Mr. Waskar, learned Advocate for the Applicant would submit that prosecutrix and Applicant got acquainted with each other on social media since May 2022 and eventually started chatting on a daily basis. He would submit that prosecutrix is a resident of Silvassa. He would submit that in June 2022 Applicant invited prosecutrix to his home in Malad to meet his family members to which she agreed and travelled all the way from Silvassa to Malad, Mumbai to meet Applicant and his family members. He would submit that this itself raises a suspicion on the prosecution case, as it contradicts any claim of coercion.

4.1. He would also submit that prosecutrix willingly stayed back at Applicant's house on that day and even after the first incident as alleged to be committed by him she did not take any action against him. He would submit that she also accompanied Applicant to various locations which itself indicates the consensual nature of their relationship considering they both were adults. He would submit that if at all she was threatened, she had sufficient time and ample opportunity to inform her family or seek assistance, which she failed to do so. He would submit that as per prosecution case prosecutrix lent

money to the Applicant on multiple occasions and voluntarily handed over her gold chain, further reflects the possibility of consensual nature of their association.

4.2. He would submit that on 19.08.2023 it is alleged that Applicant called her to his house and when she visited Applicant's house to retrieve her gold chain, she claims to have been physically assaulted and subjected to forceful intercourse by Applicant. However Medical Examination Report does not corroborate the same as it does not record any injury on her body or any signs or marks of forceful intercourse as alleged by the prosecutrix .

4.3. He would further submit that after the alleged incident at Applicant's house on 19.08.2023 prosecutrix did not lodge any complaint or take any action against the Applicant however after an unexplained delay of 1 month 15 days prosecutrix lodged FIR on 03.10.2023. He would submit that if it is prosecution case that Applicant assaulted prosecutrix since June 2022 forcibly then there is a substantial delay of 1 year 4 months after the first incident in June 2022 as alleged by prosecutrix.

4.4. He would submit that given her voluntary travel to meet Applicant and his family members to Mumbai, her continued

association and multiple incidents over a period of one and half years, the prosecution claim of coercion is highly questionable.

4.5. He would submit that Applicant is a Doctor by profession and has deep roots in the society. He would submit that Applicant is arrested on 12.10.2023 and has been incarcerated for the past 1 year 6 months and 16 days. He would submit that investigation has been completed and chargesheet has been filed however trial has not yet commenced. Hence he would urge the Court to allow the Application.

5. Ms. Newton, learned APP opposes the bail Application. She would submit that Applicant coerced the prosecutrix into following his instructions by threatening her with her obscene photographs captured by him. She would submit that Applicant induced her into a physical relationship, extorted money from her on multiple occasions and retained her gold chain. She would submit that Applicant has multiple antecedents of similar nature involving extortion and sexual relations . She would submit that offences alleged by the prosecutrix are very serious in nature and if true releasing the Applicant on bail would be a threat to the Society at large as Applicant allegedly follows a similar *modus operandi* with multiple women.

5.1. She would submit that prosecutrix denied Applicant's marriage proposal establishing her clear boundaries which he

disregarded by taking advantage of her stay at his house. Hence she would submit that chances of Applicant re-offending himself cannot be ruled out in the present case considering his past demeanor. She would thus vehemently argue against grant of bail to the Applicant.

6. Mr. Gori, learned Advocate for Respondent No.2 would adopt the submissions advanced by Ms. Newton. He would submit that Applicant used a similar *modus operandi* to extort money and forcefully developed physical relations with various other women. He would submit that Applicant is a habitual offender who preyed on vulnerable women and misused their friendship and trust which is crucial and should be considered as he poses a threat to the Society.

6.1. He would submit that Applicant is a habitual offender as he extorted money and gold chain from the prosecutrix and later lured her to his house under the pretext of returning her gold chain where he assaulted her and committed a forceful act. He would submit that he also manipulated her into compliance by threatening her with her obscene photographs captured without her consent. He would submit that when Applicant fulfilled his desires with the prosecutrix and after verbally abusing her for a prolonged period of time, extorted money and physically abused her, it ultimately compelled her to file complaint against him. He would submit that granting bail to

Applicant would pose an imminent danger to the prosecutrix and would urge that the Application be rejected.

7. I have heard Mr. Waskar, learned Advocate for the Applicant, Ms. Newton, learned Advocate for Respondent No.1 and Mr. Gori, learned Advocate for Respondent No.2. I have perused the record of the case placed before me.

8. It is *prima facie* seen that Applicant and prosecutrix were acquainted with each other since May, 2022. The prosecutrix voluntarily travelled from Silvassa to Malad in June 2022 to meet Applicant and his family. She also consented to stay back at his residence upon his insistence. *Prima facie* it is seen that despite the first alleged incident in June, 2022 which is alleged to be forcible, the prosecutrix did not lodge any complaint or take any action. Regarding the obscene photographs of prosecutrix captured by the Applicant, no substantive evidence has been placed on record for me to even arrive at a *prima facie* opinion. It is seen that even though Applicant's mobile phone was seized on 06.12.2023, no such incriminating material was found. With chargesheet now filed no such further recovery or investigation remains at the behest of the Applicant.

9. Though Chargesheet includes WhatsApp chats but they too give no clue as to whether such allegations can be *prima facie*

true. Be that as it may, the material aspect of such allegations shall be a matter of trial and appropriate conditions can be imposed upon Applicant to ensure balance between the right of the prosecutrix as well as Applicant during pendency of trial.

10. It is also seen that prosecutrix met Applicant on multiple occasions in the long timeline of the multiple incidents at several locations. If at all prosecution case is considered then it is crucial and surprising that prosecutrix even after alleged forced sexual incidents met Applicant on multiple occasions for more than one and half years before filing the FIR. This itself show and reflects that prosecutrix was well aware and knowledgeable of her actions.

11. *Prima facie* from the Medical Examination Report dated 05.10.2023 appended at page No. 97 of the Application, record shows no signs of injury on prosecutrix's body. Also the Medical Examination of prosecutrix was done at a much belated stage so as to render it devoid of any purpose. Hence the Medical Examination is of little or no use in the present case. It is also seen that after the alleged altercation on 19.08.2023 at Applicant's house where prosecutrix has alleged Applicant of committing physical assault, despite this prosecutrix did not lodge any complaint or take any action against the Applicant. All that is stated in the FIR is that when she was informed by Applicant's paternal aunt that multiple FIR were lodged against

Applicant, it is is then she decided to file the complaint against Applicant.

12. Ironically FIR is filed 03.10.2023. The delay is *prima facie* unexplained. There is a stoic silence for more than 1 year 4 months by the prosecutrix. The aforesaid timeline and the fact that during the interregnum not even once the prosecutrix raised any compliant or grievance whatsoever against Applicant is unexplained.

13. For the charge under Section 377 of IPC prosecutrix in her statement before the Medical Examiner appended at page No. 97 and read at page No.100 states that there was an 'attempt' for unnatural sexual activity. It is however seen that no where in her statement recorded in the FIR she has alleged anything regarding unnatural sexual activity. However in the subsequent statement on 07.10.2023 she states that there was an attempt for the same. This dichotomy is *prima facie* evident and this is an indicative of improving her statements at a later stage.

14. That apart in so far as the allegation of Section 420 is concerned, the ingredients of cheating i.e. deception at inception is not *prima facie* established in the present case. It is alleged that prosecutrix lent Applicant money on multiple occasions after the first forceful incident. If at all prosecution case is to be accepted on the face

of record then prosecutrix on default or non-payment could have taken action against the Applicant. However in the present case prosecutrix alleges to have continued lending him money and also alleged to have handed over her gold chain in August 2022. It is surprising that she claims that after a year in August 2023 when she went back to him to claim it back. The aforementioned timeline and delay in the present case is unexplained. However these allegations are not substantiated at this *prima facie* stage for me to consider rejecting this Bail Application. These allegations will have to be proved at trial.

15. In the present case, the tenure is of multiple incidents is of 1 year 4 months. Prosecutrix was 23 year old and Applicant was 31 years old at the time of the incidents. *Prima facie* it doesnot appear from the record that prosecutrix was either forced to keep sexual relationship or lend money / gold chain or she was induced to such an extent that she had no other option but to keep physical relationship with the Applicant. Prosecutrix is an adult and it shows that it was her conscious decision to keep sexual relationship and not take any action even after the alleged verbal and physical abuse coupled with forceful sexual intercourse and cheating. *Prima facie* at this stage possibility of noncommittal, consensual relationship therefore cannot be denied. It is also hard to believe that a mature victim of sexual violence would

willingly put herself in a situation of re-victimisation from the same person time and again over a long period of the alleged incidents from June 2022 to August 2023. *Prima facie* there is nothing to show that the present case is one of force. Hence *prima facie* it appears to be one where their association has turned sour and prosecutrix has invoked action in retrospect against Applicant. I am of the opinion that liberty of an individual is too precious of a right to be taken away in the peculiar facts of the present case as delineated hereinabove.

16. In so far as the antecedents are concerned, it is *prima facie* seen that Applicant has procured Bail but in view of diverse and multifarious arguments advanced by both the sides making allegations against the Advocate concerned, I wish to refrain from dealing with them, since in my opinion they are not relevant and germane at this *prima facie* stage to decide the Bail Application.

17. Applicant is a doctor having deep roots in the Society. There is nothing on record that makes me believe that he will not subject himself for trial. The conclusion of trial in the present case is unforeseeable in the near future. The aforesaid mitigating facts and Applicant's incarceration for 1 year 6 months and 16 days therefore persuade me to consider Applicant's case. Concerns expressed by the learned Advocate of Prosecutrix can undoubtedly be taken care of by imposing strict conditions.

18. In view of the above observations and facts delineated herein above the Applicant before me is entitled for bail. Bail Application is allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 noon for six months after his release from jail and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. Applicant shall not enter the jurisdiction of Silvassa where the Prosecutrix is residing;

- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; Applicant shall not make any attempt to re-associate with the prosecutrix in any manner either through a device or in-person;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time; and
- (vii) Any infraction of the above conditions shall entail the Prosecution to seek cancellation of this order.

19. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case and the Trial shall be adjudicated on the basis of evidence and strictly in accordance with law.

20. Bail Application is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by AJAY
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