

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4366 OF 2024**

Kartik Kumar Naidu

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Vikram Sutaria a/w Mr. Hafizurrehman Chaudhary, Ms. Meera Revade, Mr. Sangharsh S. i/b Mr. Sadik T. Pathan, Advocates for Applicant.
- Ms. Megha Bajoria, APP for for Respondent No.1 – State.
- Mr. Atul Pathak, Advocate for Respondent No.2.
- Mr. P.A. Yerunkar, ASI - Shree Nagar Police Station, Thane.

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CORAM : MILIND N. JADHAV, J.**DATE : FEBRUARY 20, 2025****JUDGEMENT:**

1. This is an Application under Section 439 of CrPC¹ seeking Regular Bail in connection with F.I.R. No. 533/2024 registered with Shree Nagar Police Station, Thane on 08.08.2024 for offences punishable under Sections 376, 420 of IPC² and Sections 66C, 66D of Information Technology Act, 2000. Applicant is arrested on 09.08.2024.

2. The incidents narrated in the FIR which form the basis of prosecution case are that, Applicant aged 43 year old and prosecutrix aged 30 year old got acquainted with each other since she was employed as a gym trainer at the gym owned by Applicant since

¹ Code of Criminal Procedure, 1973

² Indian Penal Code, 1860

December 2020; that since February 2021, she knew that Applicant was married and was having one daughter; that she chatted on phone for long hours with him initially regarding work and later started going out with him; their closeness then turned into a feeling of affection towards each other and after initial hesitation from prosecutrix and persistent demand by Applicant their professional relationship transformed into a love relationship in November 2021; since then both were constantly in touch with each other on a daily basis; since they had a good reputation in Society they decided against meeting in public spaces and instead explored to find a rented accommodation for the prosecutrix and her minor son of six years to stay so that they could meet in that place. According to the prosecutrix during this time, sometime in the month of April 2022 when Applicant's family members were not present in his house he invited the prosecutrix and established physical relations with her against her wish. Thereafter in the next few days he repeated his act twice, once in the gym and at another time in a hotel room at Jayesh-Inn Hotel. Thereafter prosecutrix states that she went with Applicant to the same hotel 2 to 3 times.

2.1. In the meantime, sometime in June 2022, they were able to find a rented premises in Mulund and Applicant helped the prosecutrix enter into a leave and license Agreement with the owner of

the premises (flat) and started living there along with her minor son (6 years) born out of her previous wedlock. There they admittedly used to engage in frequent consensual physical relations in that premises. Prosecutrix states that at all times while having relationship Applicant used to force her to drink and capture the footage in his mobile phone. As per prosecutrix, it was during this period Applicant captured obscene footage after intoxicating her once and thereafter from October 2022, he used the same as a leverage to induce her into a vicious cycle of sexual exploitation. It is alleged that he misappropriated the proceeds of such exploitation by forcing the prosecutrix to undertake compromising acts for his own advantage and for profitable running of his gym. Since the prosecutrix was banking heavily on the assurances of Applicant to marry her and had already left her mother's residence post differences that erupted between them because of the subject matter relationship, according to her she had no choice but to obey the Applicant.

3. Mr. Sutaria, learned advocate appearing on behalf of the Applicant would counter the contents of the FIR to submit that Applicant and prosecutrix, both of whom were in a subsisting marriage during the tenure of the alleged incidents itself shuns out the possibility of establishing physical relationship on the pretext or promise of marriage.

3.1. He would submit that in so far as the allegation of forceful sexual assault on the alleged occasions is concerned, the same is a concocted story. He would draw my attention to the timeline of the incidents narrated in the FIR and submit that it makes it clear that despite prosecutrix allegedly being subjected to sexual assault on three occasions, she still moved in and also engaged in physical relationship with Applicant willingly. He would submit that such a timeline is self contradictory even if one makes desperate attempts to ignore the fact that the prosecutrix, at her own will went to the hotel on the third occasion within days of two prior forceful incidents of alleged sexual assault, which in itself is a suspect.

3.2. He would submit that apart from the aforesaid incidents, where there was sexual intercourse but with consent, the remainder are mere allegations without substantiating them with corroborating material to support such claim. He would submit that this is admittedly a case of consensual relationship turning sour and prosecutrix using legal machinery to harass and extort money out of Applicant. He would draw my attention to the contents of the FIR to submit that as per prosecutrix's own case she received a sum of Rs. 3,00,000/- from Applicant's wife to stay silent on the said issue which she has accepted. He would submit that investigation is now complete and no purpose would be served by keeping the Applicant languishing

in jail in the above facts which *prima facie* establish a consensual relationship between parties over a period of time in regard various incidents and events. He would pray for the Application to be allowed.

3.3. In support of his submissions, he would refer to the facts and decisions of the following judgements / orders passed by this court in similarly placed facts and circumstances wherein consensual relationship is in existence:-

*(i) Mahesh Brijmohan Jaiswar v. State of Maharashtra*³

*(ii) Shamsulhaque Rahimali Ansari v. State of Maharashtra*⁴

*(iii) Vivek Gabaji Shinde v. State of Maharashtra*⁵

*(iv) Mohammed Alfaiz Mursalin v. State of Maharashtra*⁶

4. Ms. Bajoria, learned APP appearing on behalf of Respondent No.1 – State 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. She would submit that although investigation in the present case is complete, similar offences if committed by the Applicant against other women are yet to be examined sufficiently. She would submit that even if the acts in the present case are taken to be consensual, if an individual

³ Criminal Bail Application No.4483 of 2024 decided on 06.01.2025

⁴ Criminal Bail Application No.1437 of 2024 decided on 08.01.2025

⁵ Criminal Bail Application No.5300 of 2024 decided on 16.01.2025

⁶ Criminal Bail Application No.4591 of 2024 decided on 16.01.2025

conceals the fact that he shares the same relationship with multiple other women, it should be considered as inducing vulnerable victims in a trap and in such a case custody of Applicant is necessary to fetch out crucial information from him. 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.

5. Mr. Pathak, learned advocate for Respondent No.2 – Prosecutrix would adopt the submissions advanced by Ms. Bajoria. Additionally he would submit that Applicant had cunningly akin to a trained offender restricted the prosecutrix from depositing her own funds in her bank account in order to avoid transactions between them being recorded. He would counter the submissions made by Mr. Sutaria and submit that they both had planned to get a decree of divorce from their respective partners and thereafter were intending to get married but when Applicant fulfilled his desires with the prosecutrix and after abusing her for a prolonged period of time, he abandoned her which led to filing of the complaint. He would submit that granting bail to Applicant would pose an imminent danger to the prosecutrix as well as her minor son and would urge that the Application be rejected.

6. I have heard the rival submissions of the learned advocates at the bar and with their able assistance, perused the record of the case.

7. *Prima facie* there are multiple facts and the parties appear to be at variance with regards to multiple aspects. Be that as it may, I would refrain from diving into issues which are subject of trial and immaterial for deciding a Bail Application. Charges against the Applicant are three fold: ***firstly*** under Section 376 of IPC; ***secondly*** under Section 420 IPC and ***thirdly*** under Section 66C and 66D of the Information Technology Act, 2000. I shall *prima facie* deal with each charge to ascertain ***“Whether the alleged acts of Applicant are greivous enough to demand / continue his custody post completion of investigation?”***

7.1. In so far as the allegation of offences under Section 376 of IPC is concerned, it is an admitted position that both Applicant and prosecutrix were married since long, at the time of the incident in the first instance. Their proximity due to the professional relationship brought them closer and it is also an admitted position that they were in a love relationship since November 2021. The forceful sexual assault is alleged thrice between April 2022 to June 2022. It is alleged that it was so by a streak of relations on the promise / pretext of

marriage. *Prima facie*, the question of having relations on the pretext of getting married without intent to fulfill the commitment cannot arise when neither the Applicant nor prosecutrix were legally capable to enter into such a marriage relationship at that time.

7.2. Attention is drawn to a very recent order dated 10th February, 2025 of the Single Judge of Madhya Pradesh High Court in the case of ***Veerendra Yadav v. The State of Madhya Pradesh***⁷. The prosecutrix in that case was a married lady who lodged FIR and alleged that her consent was taken on the basis of “Misconception of the Fact”. In that case, according to prosecutrix, Accused promised her that he would enter into a wedlock after giving divorce to his wife and thus there was physical relationship between them on multiple occasions. The facts in this case are *prima facie* similar to the facts in the present case at hand. The Madhya Pradesh High Court referred to the decisions of the Supreme Court in the case of ***Prashant Bharti Vs. State (NCT Delhi)***⁸; ***Naim Ahamed Vs. State (NCT of Delhi)***⁹ and ***XXX Vs. State of M.P. & Anr.***¹⁰ wherein the Supreme Court has settled the aforesaid issue and held that when the prosecutrix is a married lady her consent for physical relationship under the garb of false pretext of

7 Misc. Criminal Case No.48783 of 2024 decided on 10.02.2025.

8 (2013) 9 SCC 293

9 (2023) 15 SCC 385

10 2024 (3) SCC 496

marriage cannot be brought within the framework of consent obtained on the basis of “Misconception of the Fact”.

7.3. What remains is the question: “***Whether the alleged incidents were forceful or not?***” To answer the said question, I am constrained to draw *prima facie* opinion based solely on the long timeline of the incidents. This is because Medical Examination of prosecutrix was done at a much belated stage i.e. on 12th August 2024 appended at page No. 179 of the Application so as to render it devoid of any purpose. Hence, as anticipated, the Medical Examination is of little or no use in the present case. At this *prima facie* stage and in absence of clear Medical evidence only a reasonable assumption can be inferred from the repeated acts of parties. It is seen from record that prosecutrix during the alleged timeline left her mother’s home and rented a place to meet with Applicant in privacy where he visited her regularly. As per her own statement she was involved in a consensual sexual relationship with Applicant. This conduct of parties makes me arrive at the *prima facie* opinion that the alleged incidents appear to be emanating out of love relationship rather than any forceful act since the prosecutrix has confessed to be in a love relationship with Applicant and both being mature adults. It is hard to believe that a 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 April 2022 to August 2024. *Prima facie* there is nothing to show that the present case is one of force. Hence *prima facie* it appears to be one where parties decision making have engaged in a relationship and when the relationship has turned sour prosecutrix has invoked action in retrospect against Applicant.

7.4. In so far as charge under Sections 66C and 66D of Information Technology Act, 2000 is concerned, parties are at variance with regard to the material aspects of the said offences and nothing substantive is placed on record for me to even arrive at a *prima facie* opinion. Chargesheet reflects certain social media chats but they too give no clue as to whether such allegations can be true. Be that as it may, the material aspects 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.

7.5. That apart, there are other allegations which are levied by prosecutrix relating to transactions of funds generated by inducing her into other alleged incidents thereby invoking Section 420 of IPC. However these allegations are not substantiated at this *prima facie* stage for me to consider rejecting this Bail Application. Rather these are serious charges but only Section 420 of IPC involved. These

allegations may be proved at trial. 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. Hence now what remains for me to *prima facie* decide is ***“Whether Applicant will subject himself for trial?”***

7.6. Applicant is a citizen having deep roots in the Society, he is successfully managing a gym and has a family (wife and daughter) to take care of. He has no prior criminal antecedents and nothing on record makes me believe that he will not subject himself for trial.

8. Hence in view of the above *prima facie* observations and reasons, Application is allowed in terms of prayer clause (a) subject to 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/- (Rupees Fifty Thousand only) 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 p.m. for three months after his release on bail 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;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall deposit with the Investigating Officer, his mobile phone and laptop used by him during the period of the incident within one week from his release;
- (vii) Applicant shall not make any attempts to contact the prosecutrix either by any electronic devices or physical means;
- (viii) 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;
- (ix) Any infraction of the above conditions shall entail the prosecution to take steps to seek cancellation of this order.

9. 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 merits of the case. The Trial Court shall adjudicate the case on the basis of evidence on record and shall not be influenced by any of the *prima facie* observations made in this order.

10. Bail Application is allowed and disposed.

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[MILIND N. JADHAV, J.]

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