

Ajay

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

CRIMINAL BAIL APPLICATION NO. 87 OF 2025

Shailesh Prabhakar Bhambardekar @ Pratham
Mane

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Ms. Punam Karande a/w. Ms. Manjiri Dhuri, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent No.1 – State.
- Ms. Shamal Gaonkar, Advocate for Complainant.
- Mr. Bajarang Desai, PSI – Samata Nagar Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2025.

P.C.:

1. Heard Ms. Karande, learned Advocate for Applicant; Mr. Karmakar, learned APP for Respondent No.1 – State and Ms. Gaonkar, learned Advocate for Complainant.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.592 of 2021 registered with Samata Nagar Police Station, Mumbai for the offences punishable under Sections 376, 420, 417, 406 and 419 of the Indian Penal Code, 1860 (for short '**IPC**') and Section 66(c) and (d) of the Information Technology Act, 2000 (for short '**IT Act**'). Applicant is arrested on 04.08.2021 and he is incarcerated for 3 years 7 months 28 days.

3. In the present crime, prosecutrix is 35 years old, equally Applicant is also 35 years old at the time of the first incident. *Prima facie* it is seen from the record of the case that Applicant and prosecutrix were known to each other since the year 2015 and what is borne out from the record show that they had a physical relationship since then. First Information Report (FIR) is filed on 31.07.2021.

4. In the present case it is seen that prosecutrix and Applicant were well acquainted with each other for the past 6 years prior to the filing of FIR. It seen that Applicant and prosecutrix were in a consensual relationship since the year 2015 and only when the said relationship between them turned sour and Applicant refused to marry her, prosecutrix lodged the present crime. It is *prima facie* seen that prosecutrix maintained a stoic silence for a prolonged period of time from the date of the last alleged incident.

5. It is *prima facie* seen that in the aforesaid timeline and the fact that during the interregnum not once the prosecutrix raised any complaint or grievance whatsoever against Applicant is unexplained. It is pertinent to note that there is a difference between giving a false promise and committing a breach of promise by the Applicant. It is settled law that to constitute an offence of false promise to marry the promise has to be from the inception which is *prima facie* not established in the present case.

6. In the decisions of the Supreme Court in the case of *Mahesh Damu Khare v. The State of Maharashtra & Anr.*¹ and *Deepak Gulati Vs. State of Haryana*², highlighted the importance of distinguishing between consensual relationships and those based on false promises, especially when the relationship involves prolonged physical intimacy. The Court has clearly held that there may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the Accused and not solely on account of misrepresentation made to her by the Accused or where an Accused on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her, despite having every intention to do so. The Supreme Court states that consent is an act of reason accompanied by deliberation and it may be express or implied, coerced or misguided, obtained willingly or through deceit.

7. *Prima facie* on perusing the record it does not appear from the record that prosecutrix was either forced to keep sexual relationship or she was induced to such an extent that she had no other option but to keep physical relationship with the Applicant.

8. Ms. Gaonkar, learned appointed Advocate for Respondent No.2 – Complainant would submit that prosecutrix has filed the Affidavit before the Trial Court of which cognizance has been taken by

¹ 2024 (4) MLJ (Cri) 578
² (2013) 7 SCC 675

the Trial Court in the rejection order of the Applicant. She would submit that in that Affidavit prosecutrix had infact consented for grant of bail as she did not wish to prosecute the present case. I have noted the submissions made by the learned appointed Advocate for Respondent No.2.

9. Mr. Karmakar, learned APP for State has placed before the Court a Discharge Application filed by the Applicant and the prosecutrix before the Trial Court.

10. Considering the aforesaid facts of the present case and Applicant's long incarceration for 3 years 7 months 28 days pending trial and completion of trial in the near foreseeable future being doubtful, I am of the opinion that Applicant can be enlarged on bail.

11. Hence, Bail Application is allowed 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.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four

weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses

or tamper with the evidence in any manner;

(ix) Applicant shall not make any attempt to re-associate with the prosecutrix in any manner either through any device or in-person; and

(x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

12. It is clarified that the observations made 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 shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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