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

BAIL APPLICATION NO.347 OF 2025

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Shailesh Laxman Thote

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Gautam Kanchanpurkar i/by Priya A. Patil for the applicant.

Ms. Supriya Kak, APP for the State.

Mr. Sopan Wadkar, PSI Pairavi, Sakinaka Road Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2025

P.C.:

1. This is an application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking bail in connection with Crime Register No.705 of 2024 registered at Sakinaka Police Station. The offences alleged against the applicant are punishable under Sections 69 and 77 of the Bharatiya Nyaya Sanhita, 2023, and under Section 67 of the Information Technology Act, 2000. The applicant is in custody since 17 September 2024.

2. The prosecution case, in brief, is that the applicant had sexual relations with the prosecutrix in the month of July 2024 under a promise of marriage. The prosecutrix is stated to have accompanied the applicant to a hotel where both submitted their Aadhaar Cards as identity proof and thereafter engaged in sexual intercourse. However, it is alleged that a female friend of the

applicant later circulated a seminude video involving the applicant and the prosecutrix, which prompted the prosecutrix to lodge a formal complaint. The complaint was registered mainly on the ground that the applicant, directly or indirectly, caused the transmission of obscene images of the prosecutrix to a third party. Following the registration of the FIR, the applicant was arrested. After completion of investigation, the charge sheet was filed on 14 November 2024. The applicant had earlier approached the learned Sessions Court for bail, which came to be rejected.

3. Learned counsel for the applicant has placed reliance on the statement of the prosecutrix recorded during investigation as well as on other material placed in the charge sheet. It is submitted that the contents of the prosecutrix's statement, read as a whole, show that she voluntarily accompanied the applicant to the hotel, where both submitted identity documents and thereafter engaged in consensual sexual activity. It is further submitted that the FIR came to be registered only after a seminude video was allegedly sent to the prosecutrix by a third person, which has no direct attribution to the applicant. The argument, therefore, is that the essential ingredients necessary to attract the offence under Section 69 of the Bharatiya Nyaya Sanhita are not satisfied on the basis of the material available at this stage.

4. On the other hand, the learned APP for the State has strongly opposed the bail application. It is submitted that the allegations levelled against the applicant are grave in nature and that the material collected during investigation indicates that the prosecutrix gave her consent for sexual relations based on a false

promise of marriage. It is submitted that in law, consent obtained by deceit or false inducement does not amount to valid consent, and therefore the provisions of Section 69 of the Bharatiya Nyaya Sanhita are clearly attracted. It is further submitted that the act of transmitting or facilitating transmission of obscene photographs of the prosecutrix to third parties also brings the case within the ambit of Section 67 of the Information Technology Act, 2000.

5. I have carefully considered the submissions made by both sides, perused the statement of the prosecutrix, the contents of the charge sheet, and the material placed on record. At this stage, it is important to note that the relationship between the applicant and the prosecutrix was not a sudden development but appears to have been ongoing for some time. The prosecutrix herself accompanied the applicant to the hotel, where both provided identification documents and willingly stayed together. The statement of the prosecutrix under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 also indicates that she did not raise any objection at that stage and that the complaint came to be filed only after a seminude video was allegedly sent to her by the applicant's friend.

6. As regards the allegation of sexual intercourse on the basis of a false promise of marriage, it is now well settled by judicial pronouncements that mere failure to fulfill a promise to marry does not automatically attract criminal liability under the penal provisions unless it is shown that the promise was false from the very beginning and was given only to obtain consent for sexual intercourse. There must be cogent and credible material to support that the applicant never intended to marry the prosecutrix at the

inception of the relationship. Whether such intention existed is a matter that would require evidence to be established during trial.

7. At this prima facie stage, it is also significant that the prosecutrix does not allege that the sexual act was against her will or obtained by use of force or coercion. The question whether her consent was obtained by deception or false promise is a mixed question of fact and law, which must be examined on the basis of evidence during trial. The charge sheet is already filed, and custodial interrogation of the applicant is no longer required.

8. As regards the offence under Section 67 of the Information Technology Act, 2000, it is alleged that obscene material involving the prosecutrix was circulated by the applicant's female friend. The role of the applicant in such transmission remains to be clearly established. Whether the applicant had knowledge or intention in relation to such transmission is also a matter which requires detailed scrutiny during the course of trial. Prima facie, there appears to be no direct material to indicate that the applicant himself published or transmitted the obscene material.

9. It is also not disputed that the applicant has been in custody since 17 September 2024. The charge sheet is filed, and the trial is likely to take considerable time to conclude. Continued incarceration of the applicant, when further investigation is not pending, may not be justified at this stage, particularly in the backdrop of the settled principles of personal liberty under Article 21 of the Constitution of India.

10. In my opinion, the applicant has made out a prima facie case

for grant of bail. However, considering the nature of the allegations and to ensure that the liberty granted is not misused, stringent conditions are required to be imposed.

11. In view of the aforesaid discussion and taking into consideration the facts of the case, the nature of the allegations, and the stage of the proceedings, the applicant is directed to be released on bail upon furnishing a personal bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand Only) with one or more solvent sureties in the like amount to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall not tamper with the evidence or attempt to influence any witness in any manner.
- b) The applicant shall remain present before the Trial Court on each and every date of hearing, unless specifically exempted for valid and sufficient reasons.
- c) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- d) The applicant shall not commit any offence or indulge in any criminal activity during the pendency of the trial.
- e) The applicant shall not, directly or indirectly, contact the prosecutrix in any manner.

12. The bail application stands disposed of in the above terms.

(AMIT BORKAR, J.)