

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
LD VC BAIL APPLICATION NO. 390 OF 2020

Ataullah Fakruddin Ansari .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Hare Krishna Mishra i/b Mr. Sanjay Singh for the Applicant.

Ms. Rutuja Ambekar, A.P.P. for the State.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 10th AUGUST 2020

P.C:-

1. The Applicant is arraigned as an accused in C.R. No.144 of 2020 registered at Kandivali Police Station. An offence punishable under Section 376(2)(N) of the Indian Penal Code has been invoked and applied against him and he has been charge-sheeted. He came to be arrested on 20/03/2020 and since then he is incarcerated. The charge-sheet has been submitted on 18/06/2020 in the competent court. Copy of the charge-sheet has been placed on record. The Bail application preferred by him

before the Metropolitan Magistrate pursuant to the filing of the charge-sheet has been rejected which has constrained him to approach this Court.

2. With the assistance of the learned counsel for the Applicant and learned A.P.P., I have perused the charge-sheet. The investigating machinery was set into motion when the prosecutrix, aged 24 years, lodged a complaint to the effect that in the month of January, 2019, she came to be in touch with the Applicant via Facebook Account and she uploaded her mobile number on the Facebook Account. The Applicant contacted her and there used to be frequent telephonic conversations between the duo. In the year 2019, she had been to Uttar Pradesh which happened to be her native place and the Applicant also visited there. The case of the prosecutrix is to the effect that she has divulged to the Applicant that she had married to one person and he has divorced her. The complainant further alleged that a proximity developed between them which resulted into establishing a physical relationship. It mentions of a repeated physical indulgence of the prosecutrix at the instance of the Applicant and even exchange of some money. A discord arose between the two and the FIR contains the details of the same and the complaint lodged by the prosecutrix is an immediate response to the said discord. The complainant herself alleged that the Applicant severed contact with the prosecutrix and she reported

the matter to her father which resulted into filing of the FIR at Kandivali Police Station.

3. The case of the Applicant is to the effect that the prosecutrix maintained a physical relationship with the Applicant as they shared a close bond of friendship and she never objected to the said act of physical proximity. The prosecutrix at the time of incident was 24 years of age and, according to the Applicant, it was a decision taken by a major person in her full consciousness.

4. The Applicant and the prosecutrix are major and as per the version of the complaint, she encouraged the friendship initially which slowly resulted into physical one. She had accompanied the Applicant at several places where the Applicant established physical contact with her. She never objected to the same and from January, 2019 till filing of the complaint in March, 2020, allowed the relationship to flourish. Then, one fine day, when the relationship turned sour, she filed the complaint. *Prima facie* reading of the complaint does not make out a case of sexual indulgence without her consent or against her will but points out a consensual act. The Applicant is arrested since March 2019. In the backdrop of the allegations in the complaint, when *prima facie* no case of forcible sexual act is made out, he is entitled to be set on bail.

5. Learned A.P.P. informs that the medical examination of the Applicant is yet not undertaken in the wake of pandemic situation. Learned counsel for the Applicant assures that he will co-operate with the Investigating Officer to undergo such an examination. Ensuring that the Applicant makes himself available for the trial is a paramount consideration and therefore subject to the following stipulation, he is released on bail.

ORDER

- (a) The Applicant – Ataullah Fakruddin Ansari shall be released on bail in C.R. No.144 of 2020 registered at Kandivali Police Station on executing P.R. bond to the extent of Rs.20,000/- and furnishing one or two sureties of the like amount.
- (b) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and the Applicant shall not tamper with evidence.
- (c) The Applicant shall provide his residential address and telephone number to the Investigating Officer.

(d) The Applicant shall report for medical examination as and when directed to do so by the Investigating Officer in the manner suggested by him.

6. The Application is allowed in the aforesated terms.

7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J