

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.346 OF 2020

Raj Praful Sarkar .. Applicant

Vs.

The State of Maharashtra .. Respondent

...

Mr. P.R. Rathod for the Applicant.

Mr. Ajay Patil, A.P.P. for the State.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 31ST JULY, 2021.

P.C:-

1. The Applicant is charge-sheeted in C.R. No.I-376 of 2018 registered with Samata Nagar Police Station for offences punishable under Sections 376(2)(n), 385, 354(c), 328, 506 of the Indian Penal Code read with Sections 65(E), 67, 67(A) of the Information Technology Act. On filing of the charge-sheet, the crime is culminated into Sessions Case No.351 of 2018. In connection with the said crime, the Applicant came to be arrested on 08/07/2018 and, since then, he is incarcerated. Though the charge-sheet is filed on 29/10/2018, charge is not yet framed.

AJN

2. The prosecutrix lodged a complaint on 21/05/2018, alleging that in the year 2017, she was introduced to the Applicant as she was working in a shop and he was also engaged there. The acquaintance culminated into friendship and the Complainant states that they used to frequent together for outings and the relationship became proximate. It is alleged that the Applicant proposed her for marriage to which she consented. It is further stated that they changed the company and shifted to other company together. The incident referred to is of 21/09/2017 when the Applicant was invited for a feast in his house and, it is alleged that, after asking her to consume one tablet, he forcibly committed sexual intercourse with her and since she was partially unconscious, she did not realize the consequence. Further, two incidents are cited when she was subjected to forcible sexual intercourse by the Applicant. It is alleged by the prosecutrix that she was confronted with the video clippings recorded by him, where the private sexual act was recorded and he kept on threatening her to make the videos viral. The prosecutrix kept on demanding that the videos be deleted, but he did not do so and he forwarded one of the video clippings to her mobile. It is alleged that he also forwarded a video clipping to her elder brother and also demanded some money from her brother for not making the video viral. This constrained the prosecutrix to approach the police and lodge the complaint.

3. During the course of investigation, the prosecutrix was subjected to medical examination, which referred to old healed tear of hymen. The video clippings, the pictures and the screen shots of her nude pictures are also compiled in the charge-sheet. The entire material is thus compiled the charge-sheet. The complainant has alleged that the physical indulgence by the Applicant was forcible and without her consent. The effect of the consent, whether it was forceful, could be determined at the time of trial. At present, since the entire material has been seized by the Investigating Agency, the long incarceration of the Applicant becomes unwarranted since the Applicant is also a young man, aged 24 years as the same age of the prosecutrix. The Applicant has been incarcerated since last three years and, the trial is not likely to conclude soon since even the charge is not framed. Hence, the following order:

ORDER

- (a) The Applicant – **Raj Praful Sarkar**, shall be released on bail in C.R. No.376 of 2018 registered with Samata Nagar Police Station, Dist. Mumbai, on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or more local sureties of the like amount.

(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall not leave the State of Maharashtra, without prior permission of the concerned trial court.

4. The Application is allowed in the aforestated terms.

5. 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.]