

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 BAIL APPLICATION NO. 92 OF 2018

AKSHAY S/O. BABURAO SHEKADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Andhale Sandip R
APP for Respondents/State : Mr. N.T. Bhagat
Assist for PP : Mr. Shaikh Mobin H.

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CORAM : MANGESH S. PATIL, J.
DATE : 15.02.2018

P.C. :

. This is an application for bail by the sole accused from Crime No. I-556 of 2017 registered with Topkhana Police Station, District Ahmednagar for the offences punishable under Section 376 (2) (n) and Section 506 of the I.P.C.

2. A lady aged 21 years taking education in an engineering course has lodged the F.I.R. on 18.12.2017 alleging that after initial acquaintance with the applicant, on 21.03.2015 he promised to marry her and had sexual intercourse with her. Thereafter, he repeated the act at other times. Subsequently, he started avoiding her, therefore, she contacted his mother and again the relation resumed. On 03.10.2017, he again took her on a Scooty and had sexual intercourse with her. He also took her photos and videos at that time and then started

threatening her of uploading it on the social websites. She therefore informed her father and the report was lodged. The offence was registered. The applicant was arrested on 18.12.2017 i.e. on the same day. The medical examination was conducted, after couple of days of police custody remand the applicant has been taken in to the magisterial custody awaiting completion of investigation.

3. The learned advocate for the applicant submits that accepting the allegations in the F.I.R. at their face value, there appears to be a consensual relation between the two. In fact, she is more in age than him and studying in an engineering college. At no point of time she has alleged about the applicant having compelled her to have sexual intercourse. The learned advocate further points out that the Investigating Officer had an opportunity to interrogate the applicant when he was remanded to police custody for couple of days. It is thereafter that the Investigating Officer sought a magisterial custody remand which is suggestive of the fact that he no more required his custodial interrogation. Under these circumstances, when the major part of the investigation is already over and when there is no material to show that the applicant has ever shot pictures or videos, further detention of the applicant behind the bars would unnecessarily curtail his liberty. He is ready to abide by whatever conditions and may be released on bail.

4. The learned A.P.P assisted by the learned advocate for the informant-prosecutrix vehemently opposes the application. He submits that the offence is serious. The applicant has made a false promise of marriage and has made her to have the relation. There is every likelihood of his threatening or influencing her if released on bail.

5. I have carefully gone through the police papers with the able assistance of the learned A.P.P. Without commenting upon the veracity or otherwise of the allegations in the F.I.R. it is a matter of fact that at no point of time the prosecutrix ever seems to have raised any objection for having sexual intercourse. Bearing in mind the fact that the couple was maintaining such relation over a period of two years and the fact that nothing incriminating has been recovered from the applicant showing that he had ever shot any picture or video, the alleged threat being perceived by the prosecutrix also cannot be stated to have any basis.

6. Under these circumstances, when the major part of the investigation has been over, further detention of the applicant in custody is not necessary. He can be released on bail subject to usual terms and conditions to allay the fear of interference in the investigation. Hence I pass the following order:

ORDER

- I) The application is allowed.
- II) The applicant be released on bail on executing a PR. bond for Rs.25,000/- and on furnishing a solvent surety in the like amount subject to the following conditions:
 - a) The applicant shall attend the concerned police station on every Saturday between 9.00 am to 10.00 am for the next one month or till filing of the charge-sheet whichever is earlier.
 - b) He shall not try to contact the prosecutrix or influence the witnesses.
- III) Bail before the lower Court.
- IV) It is made clear that the observations made herein-above are only *prima facie* and confined to the decision of this application and neither the Investigating Officer nor the trial Judge shall feel influenced by them.

(MANGESH S. PATIL, J.)

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