

MHCC050029662019



IN THE COURT OF SESSIONS JUDGE, BORIVALI
DIVISION DINDOSHI, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.760 OF 2019
(CNR NO.MHCC05-002966-2019)

H.E.Captain Ammeet K Agarwal

Aged : 30 yrs., Occ : Business

Residing at Bikaner Bhavan,

9th Floor, J.B.Nagar, Andheri (E),

Mumbai – 400 059.

...Applicant

Vs.

The State of Maharashtra

(At the instance of Oshiwara Police Station)

...Respondent

CORAM: H.H.ADDITIONAL SESSIONS JUDGE

SHRI M.H.SHAikh (C.R.NO.2)

DATE : 05th August 2019

Adv. Shailesh Kantharia for Applicant.

APP Mr. Savle for State.

Adv. Pokharkar for Intervener.

ORDER

1. This is an application u/s. 438 of Code of Criminal procedure for grant of anticipatory bail in connection with C.R.No.150/2019 registered at the instance of the complainant with the respondent police station under Section 376, 376(2)(n), 354(d), 500, 506, 342, 323 of Indian Penal Code and 66(D) of I.T.Act.

2. It is the prosecution case that in the year 2015, applicant came in contact with the complainant through FaceBook. However the complainant was not knowing the applicant, therefore she blocked the applicant on the Facebook. Thereafter in the year 2018, the applicant called the complainant on her mobile number and started sending messages on whatsapp messages. Therefore complainant decided to meet the applicant and accordingly in January 2018, she met the applicant at Hotel Mainland China, Andheri (W) and thereafter they became friendly with each other.

3. On 14/02/2018, the applicant called the complainant at Santacruz where one Swapnil was also there. On that day, applicant proposed the complainant and the complainant accepted his proposal and thereafter he took the complainant for a helicopter ride and in the evening he took the complainant to his residential place at Andheri and had a physical relationship with her, though she had refused for the same. Thereafter the complainant left the applicant's house at 3.00 a.m. as she was not keeping well, thereafter she went to the Kokilaben Hospital next day morning as it was paining. Thereafter on 07/03/2018, the applicant had an exhibition at Hyderabad, therefore the complainant accompanied the applicant alongwith Swapnil to Hyderabad and at Hyderabad applicant and complainant stayed in one room and they had physical relationship. The applicant without the consent of the complainant recorded the alleged act of physical relation in his mobile. The complainant insisted for removal of the said recording, however the applicant did not delete the same. Thereafter the applicant took the complainant to one Resort at Vasai by name Golden Bamboos, wherein the applicant made the complainant to drink alcohol and thereafter they had physical intercourse and the alleged act was also recorded by the applicant on his mobile phone.

4. In April 2018, when the complainant was checking the applicant's mobile phone, at that time complainant found many videos of applicant having

physical relationship with other women. The complainant deleted those videos belonging to the complainant. Thereafter the complainant stopped the relationship with the applicant. On 29/05/2018, applicant visited the complainant's house at Goregaon, when she did not open the door, applicant broke open the door and entered the house and assaulted the complainant and committed sexual intercourse with her. Thereafter applicant went to America and the complainant changed the mobile phone, still the applicant found the number of the complainant and started frequently calling the complainant. Applicant had threatened the complainant that he will viral the videos on social media, if she refuse to maintain physical relation with him and on these grounds, report came to be lodged with the police.

5. It is the case of the applicant that he is an innocent person. Entire F.I.R. does not show any act of applicant which would attract Section 376 of IPC. The relation between the complainant and the applicant was a consensual relationship. Applicant is diplomat and he is a Consul General of the Democratic Republic of Congo, having good reputation in the society. Photographs filed on record which were clicked by the complainant show that it was a consensual relationship between the parties. The applicant is permanent resident of Mumbai and is ready to abide by the terms and conditions. Therefore prayed to allow the application.

6. In response to the notice served by the applicant, respondent appeared and filed the say to this application vide Exh.2. In the say, they have reproduced the contents of the F.I.R. It is their case that the applicant is absconding, despite search he is not found. The medical examination of the applicant is to be carried out. Resort is to be visited at Vasai and the video shooting is to be seized. Facebook messages as well as instagram account are to be investigated and for these purposes custody of the applicant is necessary with the police. Therefore prayed to reject the application.

7. Heard learned advocate for the applicant and Learned APP for the State. After the hearing was concluded, intervener appeared in the matter through the advocate. Therefore intervention of the complainant was allowed and she was directed to file written notes of arguments on the next date. In the meanwhile, as the learned advocate for applicant prayed for interim protection and learned APP as well as learned advocate for intervenor did not object, therefore interim protection was granted to the applicant on certain conditions. Thereafter respondent filed an additional say vide Exh.5 and the intervenor filed written notes of arguments Exh.6 alongwith documents Exh.7.

8. Upon hearing and going through the material and photographs placed on record, what can be gathered is that, complainant and the applicant met each other through Facebook messages and telephonic conversations. Thereafter applicant proposed her which she accepted and their relation started. It seems that thereafter applicant took the complainant to his residence and had committed sexual relationship with her and thereafter she left from his house. Thereafter she accompanied the applicant to Hyderabad where they stayed together in a hotel and had physical relationship. Thereafter again they had sexual relationship with each other at a Resort at Vasai, therefore what can be gathered from this story is that they were having consensual sexual relationship with each other. Main grievance of the complainant is that, when they were having sexual intercourse, the applicant used to record the videos. Though the complainant in the F.I.R. had stated that she had deleted the video recordings belonging to her when she found applicant was having relation with some other women also. But the fact is that investigation as to the video recordings is to be carried out because the applicant had threaten the complainant that he will viral the video recording which is with him. The applicant might have revived the recording which came to be deleted by the complainant and that can be done. Therefore this Court finds that the mobile

and sim card is to be seized, so as to laptop is to be seized. Whatsapp messages, instagram messages, they are to be collected and that can be done only when the applicant is interrogated by the police. So also the complainant was taken to the Vasai Resort, at resort some substances was given for consuming to the complainant, in that regard also investigation is to be carried out. Moreover main fact is that the interim protection was granted on certain conditions, i.e. applicant should remain present in the respondent police station before the I.O. from 17/07/2014 on every Wednesday till further orders between 10.00 a.m. to 1.00 p.m. The applicant had breached the said condition. This is also one of the ground to turn down the application of the applicant.

9. Learned advocate for the applicant placed reliance upon “**Karan Singh Oberoi vs. The State of Maharashtra in Criminal Application no.1518/2019 dated 07/06/2019.**” This Court has gone through the said authority. The observations of the Hon'ble High Court is that the complainant in the said authority was calling the applicant repeatedly to which the applicant was not responding and in the said authority it is not case of the complainant that the sexual act was video graphed. In our case in hand, sexual acts were video graphed and the applicant had threatened the complainant that he will viral the same on social media. Therefore the said authority is not applicable to our case in hand. In the result, application fails.

ORDER

Anticipatory Bail Application no.760 of 2019 stands rejected and disposed of accordingly.

(M.H.Shaikh)
Additional Sessions Judge,
City Civil & Sessions Court,
Borivali Div. Dindoshi, Mumbai.

Dictated on : 05/08/2019
Transcribed on : 06/08/2019
Signed on : 06/08/2019

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 06/08/2019

Time : 3.30 P.M.

UPLOAD DATE AND TIME

Mrs. M. S. Putta

(H.G.Stenographer)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

HHJ Shri M.H.Shaikh (C.R.No.2)

Date of Pronouncement of JUDGMENT/ORDER

05/08/2019

JUDGMENT/ORDER signed by P.O. on

05/08/2019

JUDGEMENT/ORDER uploaded on

06/08/2019