

MHCC050046222021



**IN THE COURT OF SESSIONS, BORIVALI DIVISION, DINDOSHI,
GOREGAON, MUMBAI.**

BAIL APPLICATION NO.1197 OF 2021

Shri Ammeet Kamal Agarwal
Aged: 31 years, Occ- Business
Residing at Bikaner Bhavan,
19th floor, J.B.Nagar, Andheri(E),
Mumbai 400 069.

...Applicant

Versus

The State of Maharashtra
At the instance of Oshiwara Police
Station in CR No.150/2019

..Respondents

Shri Shailesh Kantharia, Advocate for applicant.

Shri P.K.Mahajan, Addl.PP for State.

CORAM: His Honour 2nd Addl.Principal Judge and
Addl.Sessions Judge,
Shridhar M. Bhosale
(C.R.No.1)

DATE : 5th October, 2021

ORDER

1. This is an application under Section 439 of Code of Criminal Procedure (hereinafter referred as "Cr.P.C.") for bail in connection with C.R.No.150 of 2019 registered at Police Station, Oshiwara for the offence

under Sections 376, 376(2)(n), 354-D, 500, 506, 342, 323 of Indian Penal Code (hereinafter referred as "IPC") and under Section 66-E of Information Technology Act.

2. In short, informant came into acquaintance with applicant-accused in the year 2005 through facebook and as she was not knowing applicant-accused, she has blocked the applicant-accused on facebook. However, in the year 2018, applicant-accused called informant on mobile and started sending messages on Whatsapp. Thereafter informant decided to meet the applicant-accused and informant met him at hotel Main Land China, Andheri(W) and they became friends and started meeting each other frequently. On 14.2.2018, applicant-accused called informant at Santacruz. Applicant-accused was present alongwith his friend Swapnil. On that day, applicant-accused proposed the informant and she accepted the proposal of the applicant-accused. Thereafter applicant-accused took her for helicopter ride. It is further alleged that thereafter in the evening applicant-accused took informant to his residence at Andheri directly in his bedroom. Applicant-accused requested informant to have physical relations, which she refused. But against her wish, applicant-accused committed sexual intercourse with her. Thereafter informant left the house of applicant at 3.00 a.m. in the morning and as she had pain, on the next day she went to Kokilaben Hospital for medication. Thereafter applicants-accused started behaving in good way with her.

3. It is further alleged that on 7.3.2018 applicant-accused had exhibition at Hyderabad and therefore informant, applicants-accused and

his friend Swapnil had been to Hyderabad. It is contended that during that time applicant-accused and informant stayed in one room and he had sexual intercourse with her. However, applicant-accused without consent of informant recorded video of said alleged act. Informant-victim requested him to delete said video, however applicant-accused did not delete the same. Thereafter, applicant-accused took the informant to one resort at Vasai. At that time, applicant-accused made informant to drink alcohol and had sexual intercourse. He also recorded said act. It is contended that in April-2018 when informant was checking applicant's mobile, she came across a video of applicant-accused having physical relations with other women. Therefore seeing those videos, informant herself deleted her video from the applicant-accused's mobile. Thereafter, informant decided to stop relationship with applicant-accused.

4. It is alleged that on 29.4.2018, applicant-accused visited house of informant at Goregaon, however she did not open the door. At that time, he broke open the door and entered the house and assaulted her and committed sexual intercourse with her. In May-2018, applicant-accused after returning from America met informant and removed SIM card of informant from mobile and inserted his SIM card and thus, applicant-accused started keeping watch on her. On this count, there was quarrel in between informant and applicant-accused. Further in June-2018, applicant-accused started threatening her that if she will not continue their relations, he will viral her video on social media. He used to lock her in her house at Goregaon. Due to his behaviour, complaint got frightened and hence, she did not lodge any compliant. Thereafter

applicant-accused started sending her videos to her friends and threatening her that he will defame her. On these counts, informant lodged report in the police station and crime came to be registered.

5. It is to be noted that earlier in Anticipatory Bail Application No.760/2019, this court has rejected anticipatory bail of the applicant-accused. Hence, thereafter he has approached to the Hon'ble High Court Bombay by filing Anticipatory Bail Application No.1765/2019 wherein interim protection was granted by order dated 13.8.2019. Thereafter on 7.8.2019 on the submission of Investigating officer, said application came to be withdrawn and liberty is granted to applicant-accused to apply for regular bail as charge-sheet is filed. However, interim protection granted on 13.8.2019 shall continue to operate for period of eight weeks.

6. Prosecution has filed say and resisted bail application strongly contending that, there is material to show involvement of applicant-accused. Further it is contended that appropriate order be passed.

7. Heard Ld.Advocate Shri Kantharia for applicant-accused and Ld.Addl. PP Shri Mahajan for the State. Perused the Investigation papers and charge-sheet.

8. Ld.Advocate for the applicant-accused vehemently submitted that already investigation is over and charge-sheet is filed. It is submitted that in view of the directions of the Hon'ble High Court Bombay, mobile was handed over to the police. He further submitted that as now charge-

sheet is filed, there is nothing remained to be investigated and hence, applicant-accused can be released on bail.

9. Per contra, Ld.Addl.PP submitted that applicant-accused was released on anticipatory bail during investigation as per order of the Hon'ble High Court, however he has not taken into custody or surrendered before the Court and therefore, application for bail is not tenable. He further submitted that considering nature of offence, it is not proper to grant bail.

10. In reply, Ld.Advocate for applicant-accused submitted that, already charge-sheet is filed and considering say, there is no need of arrest of accused and therefore, in the light of judgement dated 16.8.2021 of the Hon'ble Supreme Court in case of Siddharth V/s The State of Uttar Pradesh and Anr in Criminal Appeal No.838 of 2021, bail application can be entertained.

11. At the cost of repetition, I would like to state that, applicant-accused initially moved anticipatory bail application before this court which came to be rejected by order dated 5.8.2019. Then, applicant-accused moved anticipatory bail application before the Hon'ble High Court Bombay bearing No.1765/2019 and by order dated 13.8.2019, interim protection was granted. Further since the statement is made by Addl.PP before the Hon'ble High Court Bombay that charge-sheet shall be filed within a period of fifteen days, the Hon'ble High Court Bombay by order dated 7.8.2021 has continued interim protection for eight weeks with

observation that, it shall be open for applicant to apply for regular bail once the charge-sheet is filed and application for grant of regular bail be decided uninfluenced by the withdrawal of the present application. It is pertinent to note that, in view of ad-interim anticipatory bail order, applicant-accused was arrested and was released on bail. But admittedly, said interim protection granted by the Hon'ble High Court Bombay is not still confirmed.

12. It is worth to note that, Investigating officer present before the court also not strongly insisted for the custody of present applicant-accused. Moreover, in say also besides details of investigation, it is mentioned that appropriate order be passed by the court. I would also like to state that, after the charge-sheet came to be filed before the committal court, applicant-accused also appeared there on 27.8.2021 and obtained copies of charge-sheet. Moreover, today also applicant-accused has given his appearance in form of surrender, but as he is also on bail in view of interim protection by the Hon'ble High Court Bombay, he is not taken into custody. Further, during investigation material incriminating article i.e. mobile phone was also surrendered/handed over by applicant-accused to the Investigating agency. From the charge-sheet, it could be seen that there was consensual relationship between applicant-accused and informant. Only material which was required to be taken into consideration is the video of act of sexual intercourse recorded by applicant-accused in his mobile. But, it is also statement of the informant that same was deleted by informant herself. It is also worth to note that after filing of this anticipatory bail application, applicant-accused was

directed to serve to the original informant and he has sent the copy of application by currier, but it was returned unserved as party shifted. It appears that said application was posted on the address mentioned by the informant in her FIR.

12. Considering all these facts and circumstance and as already applicant-accused was on interim protection, he has also given his appearance in from of surrender before this court as well as before Committal Court, in my considered opinion, there is no obstacle to entertain bail application. Further it is well settled that once anticipatory bail is granted and accused is arrested and released on bail, same would be continued till decision of the matter. I also come to the conclusion that there is no need of custodial interrogation or keep applicant-accused behind bar. Hence, it is proper to grant bail to the applicant-accused. Accordingly, I proceed to pass the following order.

ORDER

- 1) Bail Application No.1197 of 2021 by applicant-accused Ammeet Kamal Agarwal is hereby allowed.
- 2) The applicant-accused Ammeet Kamal Agarwal is directed to remain present before Committal Court on 7.9.2021 and to furnish fresh bail bond of Rs.25,000/-(Rs. Twenty-five Thousand only), with one or two surety/sureties of the like amount in connection with Crime No.150/2019 registered with police station Oshiwara, for the offences punishable under Sections 376, 376(2)(n), 354-D, 500, 506, 342, 323 of Indian Penal Code and under Section 66-D of

Information Technology Act.

- 3) The applicant-accused Ammeet Kamal Agarwal shall not tamper the evidence.
- 4) The applicant-accused Ammeet Kamal Agarwal shall report to the police station Oshiwara on every First and third Saturday in between 11.00 a.m. to 12.00 noon till framing of charge.
- 5) The applicant-accused Ammeet Kamal Agarwal shall furnish his address permanent residence with mobile number with proof to the committal Court while furnishing bail bonds.
- 6) The applicant-accused Ammeet Kamal Agarwal shall furnish details of his two close relatives i.e. their names, addresses, mobile numbers and occupation.
- 7) The bail before committal Court.
- 8) Bail Application No.1197/2021 stands disposed off accordingly.

5/10/2021

(Shridhar M. Bhosale)
2nd Addl. Principal Judge and
Addl.Sessions Judge,
Sessions Court,
Dindoshi, Mumbai.

Date of dictation : 5/10/2021
Date of transcription by steno : 11/10/2021
Put up before P.O. for signature on : 11/10/2021
Signed on : 12/10/2021

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

UPLOADED ON 14.10.2021
AT 12.15 P.M.

Mrs.S.A.Kapare
H.G.STENOGRAPHER

Name of the Judge (with Court Room No.)	HH The 2 nd A.P.J. Shridhar M. Bhosale, C.R.No.1
Date of Pronouncement of Judgment/Order.	5/10/2021
Judgment/Order signed by P.O. on	12/10/2021
Judgment/Order uploaded on	14/10/2021