

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1037 of 2021

Maaz Rasool Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Gaurav Bhawnani for the applicant in BA No. 1037/2021.
Mrs. Anjali Awasthi for the complainant.
Mr. S. H. Yadav, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 11th NOVEMBER, 2022

P.C:-

1 Heard Advocate Gaurav Bhawnani for the applicant, Advocate Anjali Awasthi for the complainant and learned APP Mr. Yadav for the State.

2 The applicant is a young lad, aged 20 years, who is charged for the offence punishable u/s. 354D, 376(2)(i), 506 IPC, Section 4, 8 and 12 of the POCSO Act and Section 43A, 66C and 67B of the Information Technology Act, 2000, in connection with the C.R registered in the year 2020, at the behest of the prosecutrix, a minor girl. He came to be arrested on 20/5/2020. On completion of investigation, the charge-sheet came to be filed

on 15/8/2020 before the Special Court. On his second Bail Application being rejected by the Special Court on 5/2/2021, he has approached this Court.

3 The prosecutrix, a minor, reported to the concerned police station on 18/5/2020 and narrated that in the year 2016, she was acquainted with the applicant, aged 20 years through social media – ‘Facebook’ while she was pursuing her education in 9th Std. She reported that she was using the mobile phone of her mother and she used to chat with him on Instagram and Whatsapp. After the virtual acquaintance, they met in reality and as per her version, she used to visit him at the places indicated by him and by missing her tuition, she maintained the appointments. She narrate that the applicant assured her that he will marry her and he took various pictures of them together and some of them were in scanty clothes. According to her, he also asked for her nude photographs and trusting him, he forwarded the same on his Whatsapp. In the year 2017, he physically indulged with her at her house, on the pretext of marriage, when nobody was present, but she was unable to recollect the date of the incident.

4 As per the complaint, her mother was informed by the teacher about she missing the Classes and therefore, the mother confronted her and directed her not to maintain any contact with the applicant. In the year 2018, when she disclosed the applicant the scenario, he stopped calling her. After 6 – 7

months, once again, they started meeting each other clandestinely, but he started suspecting that she was carrying an affair with some other boy. Therefore, he forwarded messages to her sister that she was roaming with her friends and therefore, her sister confronted her. She got agitated and discontinued the relationship. When he threatened her that he would make the pictures in his possession, viral, she started avoiding him but was threatened by the applicant and he denied the accusation. However, she did not maintain any contact with the applicant since 2018 to March 2020.

On 12/3/2020, she came to know that the applicant had shared some intimate photographs taken together and her sister disclosed this to the family members. When she questioned the applicant, she was told that somebody had prepared a fake ID and through this, the photographs were uploaded. When she reported to the police station, she conceded to the position that she had forwarded her nude photographs to the applicant, but she did not lodge a complaint, but on coming to know that some photographs have been made viral, which had shown her in scanty clothes, she lodged a complaint, apprehending that he would defame her.

5 I have perused the material compiled in the charge-sheet. The medical examination of the prosecutrix is conducted and the final opinion read as under :-

“history of h/o peno-vaginal, peno-oral, peno-anal forceful sexual assault” can’t be ruled out”.

Along with the charge-sheet, the photographs which were made viral, are also annexed and it can be seen that the photographs feature the applicant in the company of the prosecutrix, and by no stretch of imagination, they can be considered as objectionable pictures. The two are seen in proximity with each other, but definitely the photographs do not depict nudity.

6 The learned counsel for the complainant Mrs.Anjali Awasthi has invited my attention to a Whatsapp chat in the charge-sheet, where a fake post is uploaded, wherein two mobile numbers are given inviting people to contact on the said number, in case they are desirous of having sex. She would submit that these phone numbers are of the prosecutrix and her sister.

7 The counsel for the applicant would submit that the date of birth of the applicant is ‘12/3/1999’ and he was in relationship with the prosecutrix. Definitely, the victim was minor, but the applicant was also approximately 19 to 20 years at the relevant time when he developed proximity with her, firstly, via social media and then, the physical proximity. In 2018, the prosecutrix broke off the relationship, but the FIR is lodged after almost two years when she felt threatened that her privacy would be intruded if the photographs which are in possession of the

applicant, would be made viral. The mobile phone of the applicant has been seized and has been sent for analysis, the report of which is awaited. The two photographs which are compiled in the charge-sheet, do not support the version of the prosecutrix that her objectionable photographs were forwarded on social media.

She herself has admitted that she shared proximate relationship with the applicant and though after almost three years, and she allege that she was subjected to forcible sexual intercourse.

The aspect whether her consent to the physical relationship maintained in the year 2017, was free or not, will be ultimately, determined at the time of trial. It appear that the couple shared a consensual relationship in form of friendship and developed physical intimacy, but the relationship subsequently broke off under the fear that she would be defamed, she has lodged the FIR.

8 The applicant, as on date, is a young boy and on the investigation being complete, and charge-sheet being filed, but charge is not framed. It is expected that the trial would consume considerable time and till that period, his further incarceration is unnecessary. The statement of the victim girl has been recorded u/s.164 of Cr.P.C, where she has categorically admitted that for last 3 to 4 years, she was sharing a love relationship with the

applicant, but when she wanted to break the relationship, he started black-mailing her. She also stated in her statement that, on one occasion, physical relationship was established and she had forwarded some nude photographs to him. She also reiterate that she received phone calls from several persons as someone had shared the mobile number of herself and her sister by a fake ID, and people were demanding sexual favours. She suspected that this was the act of the applicant.

He need not be further incarcerated though he may take the consequences of the accusations levelled against him in the charge-sheet, which include the accusations under the POCSO. His further incarceration is, however, not necessary, though his release shall be subjected to stringent conditions of he not attempting to intrude the privacy of the prosecutrix and/or establishing any contact with her in any manner.

9 Observations made above are prima facie in nature and limited for the purpose of adjudication of the present application, and shall in no way, bind the Special Judge while he is trying the applicant for the offence with which he is charged.

Hence, the following order :-

ORDER

- (a) The Applicant - Maaz Rasool Khan in connection with C.R.No.153/2020 registered with Vanrai Police Station shall be released on bail on

furnishing P.R. bond to the extent of Rs.25,000/- with one or two 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 so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The applicant shall not establish any contact with the prosecutrix either physically or virtually or on any online platform and any attempt of his part to do so, would result in revoking the order restoring him his liberty.
- (d) The applicant shall report to the police station on 1st Monday of the trimester between 3.00 pm to 5.00 pm. The Applicant shall attend the trial on regular basis.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)