

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 BAIL APPLICATION NO.879 OF 2022

AMITKUMAR ASHOKKUMAR BHUMIHAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. R.N. Chavan, Advocate for the applicant

Mr. S.J. Salgare, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th JULY, 2022

ORDER :

1 This is the second bail application under Section 439 of the Code of Criminal Procedure, 1973 by the applicant. His earlier Bail Application No.54 of 2021 was rejected by this Court on 04.05.2021.

2 The applicant has been arrested on 27.08.2020 by Bhusawal Bazarpeth Police Station, Dist. Jalgaon, in connection with Crime No.803/2020 for the offences punishable under Sections 376, 376(2)(n), 506 of the Indian Penal Code and under Sections 66(E), 67, 67(A) of the Information and Technology Act.

3 Heard learned Advocate Mr. R.N. Chavan for the applicant and
learned APP Mr. S.J. Salgare for the respondent.

4 It has been vehemently submitted on behalf of the applicant that while rejecting the earlier bail application this Court has ruled out the possibility that the case attracts offence under Section 376, 376(2)(n) of the Indian Penal Code, however, it was stated that the offence under the Information Technology Act can be said to be attracted and, therefore, for the said offence the applicant need not be kept in jail. He has already undergone a much period in jail. The applicant is an Army personnel and is married. The prosecutrix has suppressed the material fact that she was married earlier and had taken divorce from her husband by filing a proceeding before Family Court at Jabalpur in Madhya Pradesh. The trial could not take place due to Covid, earlier, but now also it is not progressing much and, therefore, the applicant deserves to be released on bail. Learned Advocate for the applicant has relied on the decision in **State of Kerala vs. Raneef, (2011) 1 SCC 784**, wherein the Hon'ble Supreme Court had specifically stated that delay in trial is one of the important factors for consideration while granting bail. Further, this Court in **Akash Sanjay Kale vs. The State of Maharashtra in Bail Application No.517 of 2022** decided on 22.04.2022 released the applicant therein on bail. That applicant was also serving in Army.

5 Per contra, the learned APP strongly opposed the application and submitted that a detailed discussion has been made while rejecting application of the present applicant on 04.05.2021. Taking into consideration the facts of the case it can be seen that the present applicant though employed in Army, has in fact, cheated the informant – prosecutrix and established sexual relationship under the promise to marry. He deserves no sympathy.

6 This Court has given detailed order by rejecting Bail Application No.54 of 2021 dated 04.05.2021. Those facts and reasons are not required to be repeated. It is only required to be seen as to whether any change in the circumstances has been pointed out by the applicant to release him on bail. The divorce between the prosecutrix and her husband before she could come in contact with the accused would be the matter of defence for the accused, but it cannot be said that it is a suppression of fact. What representation the applicant had made to the prosecutrix would carry the importance. Definitely, as per the First Information Report the applicant had repeated that he is employed in Indian Army and not more than that. Prosecutrix could come to know about the marriage of the applicant and the fact that he has children from his wife was on the basis of the communication received by the prosecutrix from the wife of the applicant. We cannot restrict ourselves to

the sections those have been invoked by the police and the Trial Court would be at liberty to frame charge under those sections also, of which ingredients would be attracted. Taking into consideration the WhatsApp chats it could be found out that the applicant had given threat to kill and also to defame her and that can be one of the grounds to reject his bail application. Practically, there is no change in the circumstance. The application was rejected by this Court on 04.05.2021 and it is now reported that the charge is also not framed in the case. It cannot be said to be a considerable delay, as a year has lapsed and due to almost non functioning of the Trial Courts even the old cases are still pending. We will have to consider the right of the prosecutrix to live with dignity and not to be under fear of death or defame from the applicant while considering the present application and, therefore, at this stage both the citations, on which the applicant is relying, he cannot be given advantage of them. When there is practically no change in the circumstance, no case is made out to exercise the discretion in favour of the applicant. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)