

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
LDVC ANTICIPATORY BAIL APPLICATION NO.476 OF 2020

Maj.Aunshuman Mahendra Jha	.. Applicant
versus	
The State of Maharashtra	.. Respondent
...	

Mr.Swastik Singh with Atul Singh and Akshata S. Sawant for the applicant.

Ms. Prajakta P. Shinde, A.P.P. for the State.

PI Prakash Bodare from Koparkhairne Police Station, Navi Mumbai.

CORAM: SMT. BHARATI DANGRE, J.  
DATED : 14<sup>th</sup> AUGUST, 2020.

**P.C:-**

1 At the outset, learned counsel for the applicant seeks leave to implead the complainant as a respondent. Liberty as prayer for is granted. He is also directed to issue notice to the complainant.

2 Apprehending his arrest in C.R. No. 0163 of 2020 registered with Koparkhairne Police Station for the offence punishable under Section 376, 377, 420 of the IPC, the applicant is before this Court. The crime has been registered on the basis of a complaint filed by the complainant, an I.T. Engineer working as Deputy Manager in an Telecom Company. As per the version of the complainant aged, 28 years, she had registered herself on a matrimony site and she received a proposal from the

applicant who had portrayed himself as a Major in Army and currently being posted in Manipur. The applicant and the complainant then got in touch through technological tools like Whatsapp/Video Call and telephone. The complaint then proceed to state that in the month of April 2018, the applicant visited Mumbai specifically to meet the complainant and he stayed in a Hotel. During his stay, the complainant visited him and the duo decided to get married in December. The allegation is that she was taken into confidence by the applicant and it is during this visit the applicant forcibly established physical relationship with the complainant and assured that since they are going to get married, there is nothing wrong in maintaining the physical relationship. She also referred to some unnatural sex being committed resulting in registration of an offence under Section 376 and 377 of the IPC.

3 The complaint further state that since she missed her period somewhere in June 2018, she visited a Doctor and consumed one tablet by which she was able to get rid of the pregnancy. The complaint further give the details as to what transpired during the period between late part of 2018 to 2019 and the allegation as can be crystallized is that there was unwillingness and reluctance on the part of the applicant to tie the ruptial knot. Even the families of the applicant and the complainant were roped in and it is then alleged that the hesitancy on the part of the applicant and his family to perform

the marriage, prompted the complainant to approach the police station and lodge a complaint on 20<sup>th</sup> July 2020. The delay in filing the complaint and not complaining about the forcible sexual indulgence against her consent by the applicant in April 2018 has been sought to be explained by stating that she was under the impression that the applicant is going to marry her and therefore, she kept mum. It is in the backdrop of these allegations the applicant has been incriminated for an offence under Section 376, 377 and 420 of the IPC. Along with the application, the applicant has placed on record some portion of Whatsapp chats with which gives rough estimation of the conversation and the relationship between the adversaries before me.

4 Pertinent to note that on 27<sup>th</sup> July 2020, the Addl.Sessions Judge, Thane, had granted protection and in the event of arrest, directed the applicant to be released subject to a stipulation that he will make himself available for interrogation by the Police Officers. However, ultimately on 5<sup>th</sup> August 2020, the application came to be rejected.

5 The learned APP would submit that from the allegations made by the complainant who had intervened in the proceedings before the Sessions Court, the applicant has indulged in cheating with other woman folk and he had used multiple identities and put to use distinct mobile numbers. According to the learned

APP, she has been instructed by the Investigating Officer, on the basis of the complaint by the complainant that he was using 14 mobile numbers and the better particulars are yet to be investigated into. As far as the mobile phone used by the applicant through which he was in touch with the complainant has been seized by the Investigating Officer. As regards the tracing of the other alleged telephone numbers and the telephonic details, do not warrant custodial interrogation of the applicant since this is an independent procedure which the Investigating Officer can carry on. The learned APP do not dispute the fact that the applicant has co-operated with the Investigating Officer when he was directed by the Sessions Court to report. There is no chance of the applicant fleeing the Court of justice since he is serving in the Army and is working on a responsible post of Major. It is informed by the learned counsel for the applicant that the applicant is presently posted in Kamptee Cantonment, Nagpur and he is serving in the Indian Army since June 2012. The fact that he is working in Army, a disciplined force, is a sufficient guarantee of he being a law abider and there is no hesitation in my mind that he will co-operate with the Investigating Agency.

6 As far as the allegations contained in the complaint are concerned, the complaint read with the conversation on the Whatsapp chat which has been placed on record do reveal that at a point of time, the applicant and complainant were desirous of

getting married and both of them invested in the relationship, however, for the reasons very personal to them, they drifted apart. The complainant and the applicant both being major are entitled to take decisions in their life. The fact that the complaint has been filed more than a period of two years after the alleged incident of rape itself creates many questions. In any case, the veracity of the complaint will have to be thoroughly investigated and whether there was an ingredient of cheating will also have to be discerned during the course of investigation. The applicant who has earlier co-operated with the investigation would continue to do so. The only indulgence the learned counsel for the applicant seeks is to the effect that since he is working in the Army he is expected to resume this week end and therefore, his submission is that he would obtain necessary permission from his superior and then co-operate with the investigation by coming back to Mumbai. Since in my considered view, at this stage, the custodial interrogation of the applicant is not necessary and with an assurance that he will co-operate with the investigation which is in progress, the following ad-interim relief would serve the purpose. Hence, the following order :-

#### ORDER

- (a) Issue notice to the newly added respondent (complainant).

(b) In the event of arrest, the Applicant – Maj.Aunshuman Mahendra Jha – is held entitled to be released on bail in relation to FIR No. 0163/2020 registered at Koparkhairane Police Station, on executing P.R. Bond of Rs.25,000/- and on furnishing one or more sureties of the like amount.

(c) The applicant is directed to be present in Mumbai from 24<sup>th</sup> August 2020 to 28<sup>th</sup> August 2020. The Investigating Officer is at liberty to seek presence of the applicant during this period on the dates and time which he desires and complete the investigation as far as the applicant is concerned.

(d) The applicant shall co-operate with the investigation.

(e) He 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.

Stand over to 21<sup>st</sup> September 2020.

SMT. BHARATI DANGRE, J