

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1459 OF 2022

Esrar Nazrul Ahemad .. Applicant

Versus

State of Maharashtra .. Respondent

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Mr.Uzair Kazi with Ms.Ankita Sharma i/b YMK Legal for the Applicant.

Mr.A.A.Palkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 10th JUNE, 2022

P.C:-

1. The applicant is accused of the offence punishable under Section 67A of the Information Technology Act, 2000 (for short, “the I.T.Act”) and under Section 354 of the Indian Penal Code in C.R.No.242 of 2022 registered with Kashimira Police Station, Mira Road, Thane, on 13/04/2022.

2. Heard the learned counsel for the applicant and the learned A.P.P.

3. The C.R. is registered at the instance of the complainant, aged 44 years, who has alleged in her complaint that she was

married and having two children. She was introduced to the present applicant as he was friend of her husband. In short span of time, they developed intimacy, which made them indulge into physical act. She categorically admitted in her complaint that sexual relationship was established by her consent. While in the relationship, the applicant requested the complainant to share her nude video and though she was initially hesitant, on a promise that after watching the video, he will immediately delete it, she has forwarded it on his WhatsApp. The applicant assured her that the video was deleted.

4. Somewhere in the year May 2017, she and her husband were invited to the applicant's house where his wife and daughter confronted her with her nude video and directed her that she should not establish any relationship with the applicant. Thereafter, she severed her relationship with the present applicant, is her version.

Almost after three years, once again the applicant established contact with her and expressed his desire to restore the relationship, but when she refused, he threatened her that he is in possession of her nude video. Upon this threat, she again started meeting him. Immediately thereafter, she

received the nude video on her Whatsapp and, thereafter, even her husband received the said video. The video was widely circulated in village. Being harassed in this way, she lodged the complaint resulting into registration of the crime.

5. The learned counsel for the applicant would vehemently submit that even if the accusations are taken as it is, this would not attract the provisions of Section 67-A, which prescribes the punishment for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Section 67-A prescribes the punishment for publishing or transmitting of material containing sexually explicit act etc. in electronic form. Pertinent to note that Chapter XI of the I.T.Act, includes the offence punishable under Section 67 which provides the punishment for publishing or transmitting obscene material in electronic form. The relevant Section reads thus :-

“67. Punishment for publishing or transmitting obscene material in electronic form :- Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard

to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

6. Section 67-A is a species of Section 67 which is a genus and makes an act of publishing or transmitting of material containing sexually explicit act in electronic form. Further, Section 67-B is another species of Section 67, which makes punishable an act of publishing or transmitting of material depicting children in sexually explicit act in electronic form.

7. The submission of the learned counsel that mere forwarding a nude video would not fall within the purview of ‘sexually explicit’ might not be correct. The term ‘explicit’ is defined in Oxford Dictionary as under :-

“Stated clearly and precisely, describing or representing sexual activity in a direct and detailed way.”

The intention of the legislature in introducing Section 67, being publishing or transmitting obscene material in electronic form, cannot be restricted by construing the term ‘sexually explicit’

to only showing an activity of being indulging in sex. In any case, when the intention of the legislature was to do away exploitation of women or children or any person in electronic form by publishing or transmitting any obscene material, the term 'sexually explicit', cannot be said to be not covering activity in respect of which the accusations are made.

8. The learned counsel for the applicant placed reliance upon the decision of the learned Single Judge of this Court dated 07/01/2021, where the learned Judge (Mr.Sandeep K. Shinde, J.) had an opportunity to deal with the similar situation i.e. Section 67-A and while construing the effect of Section 67, the learned Judge assigned definite meaning to the terms used therein and has also referred to the expression 'explicit' as defined in Black's Law Dictionary as, "Physical sexual activity or both persons engaged in sexual relations". However, as far as the interpretation of the term 'sexually explicit activity' is concerned, this may be a matter of concern after the specific video is examined. However, since the depiction of a woman in a nude form would definitely attract and would amount to obscene material and this being transmitted in electronic form, in my considered opinion, the accusations definitely require custodial interrogation of the

applicant and the submission of the learned counsel for the applicant that Section 67-A prima facie does not attract does not hold the water at this stage.

9. The applicant is accused of a serious allegation and exploiting a woman by publishing her nude video and making it public. This aspect requires investigation, since it is alleged that the applicant had forwarded the nude video of the complainant, to the public at large.

The application stands rejected.

(SMT. BHARATI DANGRE, J.)