

**Order Below Exh.1 in Cri. B. A. No.209/2022**  
(CNR No. MHNS010006022022)

Salim @ Asif Usman Khan Vs. State.

**Heard** :Learned Adv. Mr. H. J. Shah for the applicant.  
Learned A.P.P. Ms. S. S. Sangle for the State.

1. This is an application under Section 439 of the Code of Criminal Procedure in Crime No.306/2021 registered at Police Station, Mumbai Naka for the offence punishable under Section 354(D) & 506 of the Indian Penal Code, 1860 and Section 67-A of the Information Technology Act(hereinafter referred to as the I.T.Act). It is the case of prosecution in brief that the accused/ applicant was in a love relationship with the victim. They used to consensually meet each-other at various hotels in Nashik. However, the victim decided to end the relationship after which the applicant started stalking her. He even created a fake face-book profile and uploaded nude and semi-nude photographs of the victim on the said account and also sent these photographs to her friend.

2. Learned Advocate for the applicant has submitted that no case under section 67-A of the I.T. Act is made out in as much as it is necessary that the material published/ transmitted in electronic form should be sexually explicit in nature. He has submitted that as per the FIR, it is alleged that the applicant had uploaded/ sent 'personal' photographs of the victim which does not fall under the purview of the said section. In order to buttress his contentions further, he has relied on an unreported

order of the *Honorable Bombay High Court dated 7<sup>th</sup> January, 2021 in Anticipatory Bail Appl.No.1114 of 2020(Pramod Anand Dhumal Vs. The State of Maharashtra)*. In this matter the Honorable High Court has clearly spelled out as to what constitutes an offence under section 67-A of the I. T. Act. No purpose will be served by keeping the applicant behind bars in as much as most of the evidence is electronic in nature. In addition, the applicant is suffering from various ailments. The applicant is ready to abide by the terms and conditions imposed by the Court and should therefore be released on bail.

3. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that there is *prima-facie* case against the applicant. Investigation is in progress and charge-sheet is yet to be filed. The applicant has transmitted nude photographs of the victim which is a serious offence and has stigmatized and defamed the victim. There is no reason for the complainant to lodge a false FIR. The evidence collected by the I.O. in this regard speaks for itself. All the ingredients of the offence under section 67-A of the I.T. Act have been made out even as per the citation in the case of Pramod(Supra). If the applicant is released on bail, there is every possibility of his tampering with and threatening prosecution witnesses.

4. Perusal of the record indicates *prima-facie* case against the applicant. Offence is serious in nature wherein several nude and semi-nude photographs of the victim have been uploaded by the applicant. I have personally seen the said photographs in the case

diary. If such nude photographs would not constitute sexually explicit content, what would ! Investigation is in progress and charge-sheet is yet to be filed. Therefore, apprehension of the learned A.P.P. that if the applicant is released on bail, there are chances of his tampering with prosecution witnesses is well-founded. Unlike the case of Pramod(Supra), there is *prima-facie* material in this case to indicate that the accused has published / transmitted material which is sexually explicit in nature. In the said citation, the Honorable Bombay High Court has clearly held that “explicit” means “clear and detailed with no room for confusion or doubt or when sexual activity is graphically described or represented electronically.” Perusal of the photographs of the victim in the case diary leave no room for doubt that they are nude and thus sexually explicit wherein the private parts of the victim are visible. In view of the foregoing discussion, I am inclined to reject the application.

### **ORDER**

- 1] Application is hereby rejected.
- 2] Jailer is directed to ensure that the applicant is given the best possible treatment for his ailments.

Order is dictated & pronounced in open court.

Nashik  
22/02/2022

Mridula Bhatia  
District Judge-2 and  
Addl. Sessions Judge Nashik.