

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Criminal Application [ABA] No.157 of 2015**

(Sh. Satish s/o Madhukar Bhongle

vs.

The State of Maharashtra, through P.S.O. Sirpur, District Yavatmal)

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

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Court's or Judge's Orders

Mr. A.T. Purohit, Advocate for the Applicant.

Mrs. Mayuri Deshmukh, A.P.P. for the Non-Applicant/State.

**CORAM : PRASANNA B. VARALE, J.**

**DATE : APRIL 6, 2015.**

Heard.

The applicant apprehending his arrest is before this Court seeking protection in the nature of pre-arrest bail in connection with Crime No.13/2015, registered at Police Station Sirpur, District Yavatmal for the offences punishable under Sections 376(2)(n), 417 and 370(2) of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The learned Counsel Mr. Purohit for the applicant, by inviting my attention to the report lodged at the instance of the victim, submits that the report clearly reveals a story of relationship between the victim and the applicant going on for more than seven years. He further submits that the bare perusal of the report would show that it will not attract any

offence alleged against the applicant. He then submits that though the victim states that the association led to sexual relationship between the couple for a period of seven years and though the incident of exploiting the victim sexually allegedly occurred on 05/11/2014, the report is lodged on 24/02/2015. Thus, the submission of the learned Counsel for the applicant is that it is a far-fetched story of the informant-victim. The other limb of the argument of the learned Counsel is on somewhat identical facts wherein this Court protected the applicant in Criminal Application [ABA] 390/2013. The learned Counsel then submits that the applicant was protected by an interim order of this Court and he has extended his co-operation to the investigating agency by abiding the conditions imposed upon him by this Court.

On perusal of the report, I find considerable merit in the submission of the learned Counsel for the applicant. It is also difficult to say, how the agency attracted provision of Section 370(2) of the Indian Penal Code against the applicant apart from the other offences under Section 376(2) of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. There was substance in the submission of the learned Counsel for the applicant that the investigating

agency mechanically acted without even *prima facie* satisfying itself. When the report states that the victim had an association with the applicant in the nature of love relationship for more than seven years, one fails to understand, where is the question of alleging of act of Section 370(2) of the Indian Penal Code, which deals with trafficking of a person. There was also considerable merit in the submission of learned Counsel Mr. Purohit that even the case against the applicant would not attract any act under Section 375 of the Indian Penal Code considering all the seven descriptions referred to. Similar is the case of allegation against the applicant for the offence under Section 3(1)(xii) of the Atrocities Act. What remains in the report is then the alleged introduction of theory of consent on the pretext of marriage. It will be useful to refer to the observation of this Court in Criminal Application No.390/2013 as referred by the learned Counsel Mr. Purohit on somewhat of similar backdrop, which reads thus :

*“4. The case of the applicant is that it was sex by consent and there was no promise on the part of the applicant to marry the complainant. It is submitted by Mr. Purohit that the consent of the complainant was never obtained by extending any promise of marriage. It is submitted that the sexual intercourse took place on various occasions by mutual consent.*

*The story of promise to marry has been introduced by the complainant at a later stage as the applicant is not now ready to marry the complainant and his marriage has been fixed by his parents.*

5. *I have gone through the F.I.R. and I am in agreement with the learned Advocate Mr. Purohit that the possibility of introducing the theory of 'consent on the pretext of marriage' cannot be ruled out."*

In Criminal Application No.390/2013, the allegation was, the applicant had administered some intoxicant to the victim. In the present matter, there is not even such allegation, but the victim herself states in the report that the love relationship reached in physical intimacy between the couple for a period of seven years.

Considering all these aspects, in my opinion, the learned Counsel for the applicant has made out a case for grant of protection in the nature of pre-arrest bail. The apprehension of the State can be taken care of by imposing certain conditions on the applicant.

In the result, the application is allowed. The interim protection granted to the applicant by this Court on 19/03/2015 stands confirmed with a condition that the applicant to attend Police Station Sirpur, District Yavatmal on every second and fourth Sunday of the month from 09:00

a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till filing of the charge-sheet.

The application is disposed of as such.

**JUDGE**

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