

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

CRIMINAL APPLICATION [ABA] No.413 OF 2016

Piyush Rajkumar Daroliya

vs.

The State of Mah. through PSO Police station Gondia.

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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

Shri S.M. Thakare, Advocate for the applicant.
 Shri S.J. Kadu, APP for the non-applicant.
 Shir G.G. Bade, Advocate for intervenor/complainant.

CORAM : S.B. SHUKRE, J.

DATE : 25th JULY, 2016.

Heard learned counsel for the applicant and learned Additional Public Prosecutor who is assisted by the learned counsel for the complainant.

This application has been opposed on the grounds amongst others, that this applicant had issued threats to the complainant that if she failed to maintain physical relations, he would spoil her life and life of her sisters and he would see that none of them is able to perform marriage. The learned counsel for the applicant has stated that this threat has been issued allegedly about one year before filing of the complaint and this itself shows the falsity of the allegations. He placed his reliance upon the case of Kalyan Ram Joshi Vs. State of Karnataka reported in **2014(2) Crimes 590 (Karnataka)**. However, on perusal of the said case, I find that it is of no help to the prosecution as this case has been turned on the fact that although it was averred that the petitioner therein had threatened the complainant on her life, there was no averment in the complaint to the effect that the petitioner had threatened the complainant that he would finish her off if she lodged the

complaint. But here, the nature of the threat is different and if it is taken at its prima facie value, it would create an impression that with such a threat, a girl of marriageable age would certainly start thinking as to whether or not any complaint should be made against such a person, lest there be damage to her own marriage prospect as well as that of her marriageable sisters. Therefore, I am of the prima facie view that if complaint has been belatedly filed after issuing of such a threat, that by itself could not be considered as a ground for grant of this application. Something more would have to be shown as going in favour of the applicant. But, that does not seem to be the case.

Learned counsel for the applicant has referred to me the case of Mahesh Balkrishna Dandane vs. State of Maharashtra reported in **2014(4) Crimes 37 (Bom.)**. In this case, it has been observed by the learned Single Judge of this court that nowadays keeping sexual relationship while having affair or before marriage is not shocking as it was earlier and if relations between complainant and accused were going on for a long period of time, it would be suggestive of choice jointly exercised by both the parties and therefore, the possibility of such relationship being non-committal and consensual would be very much there. There could be no doubt about existence of a non-committal consensual relationship between the parties in a given case. But, here is a case wherein material shows that facts are quite different and the allegations made against this applicant by the complainant stand on different footing. Their foundation is of giving false promise of marriage, which has been alleged to be false to the knowledge of the applicant, for inducing the complainant to enter into physical relationship with this applicant. The allegations made in second paragraph of the complaint in particular prima facie go to show the intention of the applicant since the beginning of the relationship. At this

juncture, I do not wish to make any detailed comment about this aspect of the case. Suffice it to say that the allegations made against the applicant, at this stage, cannot be straightway dismissed as false or as showing a non-committal consensual relationship. Therefore, the said case law would provide no assistance at this stage to the applicant.

The prosecution reply discloses that this applicant has criminal antecedents and one offence punishable under the provisions of Bombay Prevention of Gambling Act has been registered against this applicant. The affidavit filed by the applicant also shows that some case was registered against this applicant by Railway Protection Force at Chennai, in which the applicant was required to undergo police custody. No further details of this case have been filed on record by the complainant. However, the fact that at Gondia itself one criminal offence has been registered against the applicant shows that the applicant has criminal antecedents.

With such background and in the facts and circumstances of this particular case, I do believe that there would be possibility of applicant misusing the liberty if anticipatory bail is granted to him. Therefore, this application cannot be allowed. The application stands rejected.

The observations made by this court are for consideration of grant of anticipatory bail and therefore, the court below shall not be influenced by them in any manner if regular bail application under section 436 of Cr.P.,C. is filed and same shall be decided by that court on its own merits without being influenced by the observations of this Court in any manner.

JUDGE

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : R.B. Hirekhan.
P.A.

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