

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (ABA) No.145/2018
(Sheikh Arif s/o Sheikh Iqbal .vs. The State of Maharashtra through its PSO,
P.S. Kuhi, Dist. Nagpur.)

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

Court's or Judge's orders.

Mr. D.V. Chauhan, Advocate for Applicant.
Mr. N.B. Jawade, APP for Respondent/State.
Mr. S.M. Uke, Advocate for Complainant.

CORAM : NITIN W. SAMBRE, J.
DATED : SEPTEMBER 05, 2018.

Heard Mr. D.V. Chauhan, learned counsel for the applicant, Mr. N.B. Jawade, learned APP for respondent no.1 and Mr. S.M. Uke, learned counsel for the complainant.

2. The present applicant is seeking pre-arrest bail in Crime No. 78 of 2018 registered on 23.02.2018 punishable under Section 376 of the Indian Penal Code.

3. It is the case of the prosecution that victim girl alleged that while working as a beautician, she came in contact with the present applicant and was in love relations with the present applicant since June, 2011. According to her, in 2012 the applicant established sexual/physical relations with her, which were thereafter repeated till date under the false pretext of marriage. She underwent abortion on 04.03.2013. According to her, an engagement was performed with the applicant in

the month of July, 2017. However, the applicant again asked the victim complainant to undergo abortion which she refused. According to her, the present applicant got engaged on 31.12.2017 with some other girl and refused to marry the present applicant. As such offence in question.

4. In the aforesaid backdrop, the learned counsel for the applicant Mr. Chavan would urge that the applicant in fact has performed marriage with the victim girl and would draw attention of this Court to the Nikah Nama dated 20.01.2017 which is also signed by the present applicant. He would urge that the necessary ingredients of offence under Section 376 of the Indian Penal Code are not attracted as neither the present applicant is denying status of the victim girl as wife nor the paternity of the daughter who is born recently. According to him, the applicant is ready and willing to accept the victim girl as his wife including the daughter. He would urge that there are repeated talks between the applicant and victim girl so as to reconcile the whole issue and they can live together. He would then urge that the applicant is not disowning the child and the victim girl as his family and to show his *bona fides*, in response to the court's query, has voluntarily deposited an amount of Rs.10,00,000/- towards the expenses and maintenance. The learned counsel Mr. Chavan in addition to above would invite the attention of this Court about bank account being jointly operated by the applicant and the victim girl.

5. Mr. Chavan would invite attention of this Court to the order passed by the Division Bench of this Court on 27.04.2018, which according to him, is still holding the field, passed in Criminal Application No. 440 of 2018 wherein the Division Bench has restrained the investigating agency from filing the charge-sheet. The applicant then submits that he has deep roots in the society and very much available for the investigation and has cooperated the investigating agency and still ready and willing to extend all cooperation with the investigating agency.

6. Per contra, the learned A.P.P. would urge that perusal of the F.I.R. satisfied the necessary ingredients of Section 376 of the IPC and as such the offence came to be registered. According to him, though applicant was directed to appear before the investigating agency everyday with effect from 10.03.2018, the applicant has stopped appearing before the investigating officer after few dates. The learned APP does not dispute the fact that the applicant has tried to reconcile the relationship by approaching the complainant so as to sort out the differences and stay together. The learned APP then submits that the custodial interrogation of the applicant is necessary.

7. Mr. S.M.Uke, learned counsel appearing for the complainant would invite attention of this Court to the threats issued by the applicant to the victim girl particularly the complaint placed on record to that effect. He would urge that the signature on the Nikah Nama is

opined by the handwriting expert to be not of victim girl. He would urge that there is false entry taken in the passport of the applicant about victim girl as wife of the applicant and the victim girl is not interested in settling the matter with the applicant and also not interested in the amount deposited in this Court. He sought rejection of the present application.

8. Considered rival submissions.

9. It is the case of the victim girl in the FIR that she was in love relations with the applicant since June, 2011 and her such physical and sexual relations with the applicant continued till the date of lodging of the FIR when she was carrying pregnancy from the applicant. The fact remains that there was abortion on 4.3.2013, however, the physical relationship between the complainant and the applicant even thereafter continued, which speaks of consent of victim girl, who is major.

10. Apart from above, the applicant has neither denied paternity of the newly born daughter nor disowned the victim girl as his wife. Rather he has come out with a case that he is ready and willing to stay together and spend his remaining life with victim girl and daughter.

11. That being so, in my opinion, it can be inferred that the physical relations as alleged by the victim girl against her choice or wishes, cannot be inferred, rather

the story narrated in the FIR speaks of long standing love and physical relations at least for last six years. Apart from above, the applicant so as to show his *bona fides*, has deposited amount of Rs.10,00,000/- in this Court so that the victim girl and newly born daughter should be taken care of properly. However, the learned counsel appearing for the complainant Mr. Uke, has on instructions submitted that the victim girl does not want to compromise the present case or is not interested in the money deposited in the Court by the applicant.

12. The submissions of the applicant that there were attempts to reconcile entire differences, is consented by the learned APP. As such, in my opinion, a case for grant of pre-arrest bail is made out. The applicant is already on interim pre-arrest bail granted by this Court on 08.03.2018 and the parties i.e. applicant and the victim girl appears to be at loggerhead as there are complaints initiated by the victim girl under the Atrocities Act, in which there is interim protection order in favour of the applicant by this Court. The application as such stands allowed on the following conditions:-

- (i) In the event of the arrest of the applicant in Crime No.78 of 2018 registered with the non-applicant for an offence punishable under Section 376 of the IPC, the applicant be released on his executing P.R. bond in the sum of Rs.50,000/- with two sureties in the like amount.
- (ii) The applicant shall not tamper with the

prosecution evidence nor shall influence the prosecution witness in any manner.

- (iii) The applicant shall attend the investigating officer on Tuesday and Friday in between 10 a.m. and 12 noon, of each week commencing from 09.09.2018 for another four weeks and thereafter on every Tuesday till filing of the charge-sheet.

13. At this stage, a joint request is made by the learned counsel appearing for the applicant and complainant that amount deposited in this Court by the applicant to the tune of Rs.10,00,000/- be made in fixed deposit. The request appears to be reasonable. The Registrar (Judicial) is directed to invest the said amount of Rs.10,00,000/- in the Fixed Deposit, initially for a period of six months and shall renew thereafter till the final decision of the trial.

14. It will be open to the parties to make appropriate request before the Division Bench wherein the proceedings for quashing of the F.I.R., are pending at the behest of the applicant, to pass appropriate order dealing with the aforesaid amount of Rs.10,00,000/-.

15. In any case, the applicant will not be permitted to withdraw the said amount of Rs.10,00,000/- having regard to the fact that the applicant has accepted the paternity of the child born to the victim girl.

16. The application, as such, stands disposed of in above terms.

JUDGE

Rajendra
Gajananrao
Halwai

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by Rajendra
Gajananrao
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