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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1576 OF 2018

1. Natharam Jasaji Choudhary,
2. Kaluram Rugaramji Choudhary ..Applicants.

V/s.

The State of Maharashtra ..Respondent.

ANTICIPATORY BAIL APPLICATION NO.1693 OF 2018

Mohanlal Chamnaramji Choudhary ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

ANTICIPATORY BAIL APPLICATION NO.1106 OF 2018

Jagdish @ Jogaram Pukraj Choudhari ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Mr.Satyavrat Joshi for the applicant in all matters.

Smt.J.S.Lohokar, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 8, 2019

P.C.:-

Heard learned counsel for the applicants and learned APP for the State.

2. In all these applications, the applicants are seeking pre-arrest bail in crime No.167/2018 for offence punishable under sections 366, 376, 506 read with 34 of the Indian Penal Code and under section 67 of the Information Technology Act registered with Bhosari, MIDC police station, District Pune.

3. The prosecution case against the applicants is, Lila daughter of Punramji Choudhari came to be accosted by the applicant Mohanlal and forced her into marriage and committed an offence of rape.

4. This Court had granted interim protection in favour of the applicants. Investigating officer also informed that marriage certificate which is produced on record registering the marriage of Mohanlal with Lila is a genuine one. There is one more additional factor which this Court takes note of is, the complainant has also

lodged a intimation with MIDC police station about her marriage. The conduct of the complainant of marrying and establishing physical relations with accused Mohanlal *prima facie* appears to be a voluntary act. She has travelled from place to place with the applicant after her marriage as is apparent from the contents of the F.I.R.

5. Apart from above, the complainant has attended her own marriage reception with the applicant Mohanlal which speaks voluminous of the consenting act of the present complainant.

6. The Apex Court in the recent judgment in the matter of *Dr.Dhruvaram Murlidhar Sonar V/s. The State of Maharashtra & Ors*¹. in para 20 observed thus :-

“ 20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had malafide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with

¹ Criminal Appeal No.1443 of 2018

the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any malafide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

7. In the wake of above observations, what can be noticed from the facts of the present case is, there appears to be a voluntary act on the part of the complainant in establishing relationship with the applicant Mohanlal with whom she had not only got married but also reported her marriage to police station Bhosari and has registered the marriage in Rajasthan after attending her own reception. As such, the entire act of the complainant of establishing relationship with the accused persons is voluntary and without any false promise of marriage. That being

so, ad-interim protection ordered in favour of the applicants stands confirmed. Hence the order :-

- (i) In the event of arrest in Crime in crime No.167/2018 for offence punishable under sections 366, 376, 506 read with 34 of the Indian Penal Code and under section 67 of the Information Technology Act registered with Bhosari, MIDC police station, District Pune, the applicants be released on bail on their executing P.R. bond of Rs.25,000/- each with one surety in the like amount by each of them;
- ii) The applicants shall attend the investigating officer as and when directed;
- iii) The applicants shall not influence the prosecution witnesses or tamper with the evidence;
- iv) All the applications stand disposed of accordingly.

(NITIN W. SAMBRE, J.)