

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

CRIMINAL APPLICATION (ABA) NO. 498 OF 2021

Hitesh s/o Ashok Mahajan
..vs..
State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri A.M. Jaltare, Advocate for applicant.
Shri M.J. Khan, A.P.P. for non-applicant/State.
Shri P.V. Dandwate, Advocate for assisting prosecution.

CORAM : VINAY JOSHI, J.
DATED : 21/08/2021

At the instance of report lodged by the victim-lady aged 24 years, crime No.434 of 2021 was registered by the Police of Jaripatka Police Station, District Nagpur for the offence punishable under Sections 376(1), 376(2)(n), 313, 417 read with 34 of the Indian Penal Code. Due to registration of the crime, the applicant apprehends his arrest, hence, claims for pre-arrest protection.

2. The non-applicant/State resisted bail by filing affidavit-in-reply. It is argued that the applicant had sexually abused the victim-lady under the pretext of false promise to marry, which amounts to the offence of 'rape' as defined under Section 375 of the Indian Penal Code. Moreover, there are allegations that the applicant has forcibly administered pills to the victim

for aborting her pregnancy. In view of seriousness of the crime, the application is prayed to be rejected.

3. With the assistance of both sides, the contents of First Information Report were gone into. The victim-lady aged 24 years was serving as a Staff Nurse in Alexis Hospital, Mankapur, Nagpur. The victim and the applicant aged 25 years, were well acquainted with each other since their child-hood. They had a long standing friendship, which was turned into love-affair. The applicant after completing his engineering education, has entered into the government service as a junior engineer. It is alleged that in the month of February 2021, the applicant expressed that he desires to marry with the victim. Then on 31.03.2021, he took the victim to his room and by giving promise to marry, had sexually exploited her. Then the things were repeated. The victim became pregnant from the relations. On 08.06.2021, the applicant along with his sisters took victim into confidence, again assured for marriage and administered pills to abort a child. Since the applicant refused for marriage, the victim lodged the report.

4. Learned Counsel for the applicant would submit that entire allegations are false and fabricated. In the alternative, it is submitted that the victim was major and at the most, it is a case of consensual sexual relationship. It is argued that there was no

intention to deceive the victim, however, as the things did not materialized, it was not possible for the applicant to marry with the victim. In order to impress the said submission, the applicant has produced certain documents to show that the victim lady was in relations with two other persons. When the applicant realized that the victim lady was in relationship with some others, he remained back footed. Therefore, in sum and substance, it is not a case of sexual exploitation on account of false promise to marry..

5. Learned A.P.P. appearing for State, by placing reliance on the decision of Madhya Pradesh High Court in case of Misc. Criminal Case No.29708 of 2021 passed on 03.08.2021 has submitted that, in similar situation pre-arrest protection was refused. The said case is distinguishable on facts. In said case, despite knowledge that both are belonging to different religion, accused allured the victim to enter into physical relations. On considering various factual aspects bail was declined. Needless to say that each case has to be examined on given facts. Therefore, the said decision would not assist the prosecution in any manner.

6. *Prima facie*, it is evident from the First Information Report that, both were acquainted with each other since their school days. It also emerges that they were in relationship. The victim stated that under

the false promise of marriage, the applicant had sexually exploited her. In order to ascertain the worth of defence, I have gone through certain documents tendered by the applicant. He has produced some related Facebook page, wherein the photograph of the victim with one other person namely Shubham Fule appears. This join photograph of victim along with a person namely Shubham Fule has been posted. He took me through certain Facebook chats of the victim with other person namely Mohanram Choudhary to impress that there were intimate relationship. *Prima facie*, these documents can be seen to assess the defence.

7. Learned Counsel for the applicant by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and ors. AIR 2019 SC 4010*** has argued that mere breach of promise to marry would not constitute an offence of rape. Likewise, on the same point, reliance has been placed on the decision of this Court in the case of ***Sheetal Rajaram Kadam vs. State of Maharashtra 2015 ALL MR (Cri) 2930***. In both these cases, it has been ruled that a mere breach of promise to marry could not be said to be a false promise. In order to establish a false promise, the maker of the promise should have had no intention of keeping his word.

8. It is the factual aspect to see whether the applicant has obtained consent of the victim by giving false assurances of marriage. The prosecution has to show that a consent was given under misconception of fact as well as the applicant has obtained consent with a knowledge that by believing on his false assurances, the consent was given. There is marked distinction in between false promise to marry and non compliance of wishes due to other circumstances.

9. The First Information Report itself states that when the applicant's parents came to know about the love affair and physical advances, they met with the victim's parents and had a meeting for arranging marriage. *Prima facie*, the said act of arranging meeting for marriage speaks against the case of false promise of marriage.

10. It is not the case that the applicant was a stranger or was already a married fellow. It reveals that since long time, both were knowing each other and had crossed their limits. It is a matter of trial to establish that since inception, the applicant was intending to deceive the victim-lady.

11. Having regard to documents tendered by the applicant, the matter requires consideration in that regard. The applicant is serving as a junior engineer with the State Government. There is no likelihood of

applicant fleeing from justice or of abscondence. Nothing is to be seized at the instance of the applicant. Having regard to all these facts, the applicant's liberty can be protected by directing him to join course of investigation. Hence the following order:

- (a) In the event of arrest applicant/accused Hitesh s/o Ashok Mahajan in connection with Crime No.434 of 2021 registered with Jaripatka Police Station District Nagpur for the offences punishable under Sections 376(1), 376(2)(n), 313, 417 read with 34 of the Indian Penal Code, he be released on anticipatory bail on his furnishing P.R. bond of Rs.25,000/-with one surety in the like amount.
- (b) The applicant shall attend concerned Police Station on every Sunday in between 11.00 am to 2.00 pm to facilitate the investigation till filing of the charge-sheet.
- (c) The applicant/accused shall make himself available for medical examination and for giving samples as and when called by the Investigation Agency.
- (d) The Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE