

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

CRIMINAL APPLICATION (ABA) NO. 588 OF 2021.

Nitesh Shambhu Pardhe

-Versus-

State of Maharashtra, through P.O. City Kotwali, Amravati.

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

Court's or Judge's orders

Shri D. Khushalani, Advocate for the Applicant.
Shri M. Khan, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 01, 2021

Heard.

2. In anticipation of arrest in Crime No.920/2021, registered with the City Kotwali Police Station, Amravati for the offence punishable under Section 376[2][n] of the Indian Penal Code, the applicant is seeking pre-arrest bail.

3. At the instance of a report lodged by the victim – lady, aged 23 years, the aforesaid crime came to be registered. The applicant is stated to be a distant relative of the victim. In some family function in the year 2018, they got acquainted with each other and developed friendship. By efflux of time, the friendship turned into love relationship.

4. The applicant is serving in Armed Forces as a

Sipoy, and was posted at Pangarh in West Bengal. The victim has stated that on 03.03.2020, while the applicant was on leave, he called the victim at Amravati and thereafter, both of them went to one lodging house. The applicant gave assurance of marriage, on which they had physical relation. The victim stated about similar incident dated 15.03.2020 of sexual relationship, which was also by giving assurance of marriage, in one lodging house at Badnera.

5. It is her case that on 18.03.2020, the applicant was admitted in Hospital at Achalpur, due to accident, from where he was taken to Pune, where the victim lady also stayed for few days along with parents of applicant. The victim has stated that during said period, parents of applicant also assured that they would perform her marriage with the applicant. It is her case, that when the applicant had recovered, she tried to contact him on phone, but, the applicant did not respond. Later on the applicant has flatly refused to marry the victim and expressed that he would marry some other lady.

6. It is the prosecution case in short that on false promise of marriage, the applicant had sexually exploited the victim. Admittedly, both were major and the incident is an outcome of a love affair. There are no allegations that the

applicant had any point of time forced or coerced the victim for sexual relation.

7. No doubt if 'consent' is based on 'misconception of facts', it is not a consent in the eyes of law. There is marked distinction between 'false promise' and 'breach of promise'. In the decision in case of **Pramod Suryabhan Pawar .vrs. State of Maharashtra – 2019 [9] SCC 608**, the Supreme Court has ruled that to establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. Moreover, the false promise must be of immediate relevance or having direct nexus with the women's decision. Herein both are major and of marriageable age. Parents of applicant assured for marriage, therefore, it is a matter of trial to establish whether since inception the applicant was having deceitful intention and has obtained the consent of victim on false such promise.

8. Pertinent to note that as per victim's statement, they had physical relation in between 03.03.2020 to 15.03.2020. She has stated that approximately after one

month from 18.03.2020, she was informed by the applicant that he would not marry her, still for next 1 ½ half year, the victim lady has not lodged any report. The applicant made a statement that on 26.09.2021, he was medically examined by the Doctors, through police. Having regard to the nature of accusation, nothing is to be seized from the applicant.

9. While resisting bail it is also contended that the while the applicant was on interim bail, he has threatened the victim, for which N.C. report has been lodged. In response, it is contended that a false N.C. report has been lodged to deprive the applicant from getting bail.

10. It is a fact that the applicant is serving in Armed Forces and posted at a place located in West Bengal, therefore, apparently he would mostly stay at such a longer distance. There is no possibility of applicant fleeing from justice, since he has permanent service in Armed forces.

11. Having regard to the nature of accusation, the applicants liberty can be protected by imposing suitable conditions. In view of that following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The interim order dated 07.09.2021, passed by this Court is hereby made absolute on same terms and conditions, with a modification that hence forth, the applicant shall attend the

Order

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concerned police station as and when called.

- (iii) In case the applicant tried to contact th victim personally or through any electronic mode, the State in that event is at liberty to move for cancellation of bail.

JUDGE

Rgd.