

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

**CRIMINAL APPLICATION (ABA) NO. 788/2020**

Akshay S/o Kailash Gaikwad  
**VERSUS**  
State of Maharashtra

And

**CRIMINAL APPLICATION (ABA) NO. 789/2020**

Kailash S/o Ashruji Gaikwad & anr.  
**VERSUS**  
State of Maharashtra

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

Court's or Judge's Orders

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Shri Anil Mardikar, Sr. Advocate assisted by Shri V. R.  
Deshpande, Advocate for applicants.  
Shri A. M. Deshpande, APP for non-applicant/State.  
Shri S. V. Sirpurkar, Advocate for informant.

**CORAM : VINAY JOSHI, J.**  
**DATE : 09.08. 2021.**

Heard.

2. At the instance of report lodged by victim lady aged 29 years, Police of City Kotwali, Akola, Taluka and District Akola registered Crime No. 529/2020 for the offence punishable under Sections 376(2)(n), 328, 406, 420, 506 of the Indian Penal Code and Section 66(B) of the Information Technology Act.

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Apprehending arrest in said crime, two separate pre-arrest bail applications have been filed by Akash s/o Kailash Gaikwad and his parents since they remained unsuccessful in securing bail in the Court of Sessions. Both applications were resisted by the State vide its reply-affidavit contending about seriousness of crime and need of interrogation.

3. Heard Anil Mardikar, learned senior counsel in both applications for applicant as well as Shri A. M. Deshpande learned APP for State and Shri S. V. Sirpurkar, learned Advocate for the informant. Minutely examined the papers annexed with both applications and the investigation papers.

4. At the outset, it can be said that the entire episode is outcome of the relationship between two youths which took sore end. On 09.12.2020, informant – lady lodged report detailing her alleged sexual exploitation at the hands of applicant Akshay, and cheating by his parents. It is victim's case that in the month of September 2019, she was befriended with Akshay (accused) through social media. They exchanged phone numbers and were frequenting with

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each other. Their casual acquaintance was blossomed into intimate relationship. The victim lady was doing a job in private Bank at Akola whilst accused was serving a Junior Engineer at Khamgaon but was resident of Taluka Lonar.

5. First time, on 01.12.2019 or somewhere in the first week of December 2019, accused came to Akola and took victim in rented flat behind Vaibhav Hotel in Akola. The accused offered some cold drinks to the victim and, on its consumption, she started feeling dizzy. The accused also assured her for marriage while she was under influence of intoxicant. By taking disadvantage of the situation, the accused committed sexual intercourse with her. Though the victim did attempt to resist, however due to dizziness, she succumbed to the wishes of accused.

6. The second incident quoted by victim is of 18.03.2020. On that day, the accused came to Akola by his four wheeler and took her to the seclude place at Morana Riverbed. The accused showed to victim her obscene video clips, pictures and threatened to make them viral. Under such threat, he again sexually

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exploited the victim in his vehicle. Thereafter, in the month of May 2020, accused took victim to Lonar at his parents' house. On one or another pretext, the family demanded financial help to her. Since the victim does not have money, she gave gold chain and ring to the parents of accused on assurance of return.

7. The third incident is dated 06.10.2020. On that day, the accused along with his parents came to Akola and raised monetary demand. Since the victim does not have money, she gave a gold marital cord (Mangalsutra) weighing 20 to 25 grms to the parents of the accused. On the same day, the accused once again took her at Morana Riverbed and under threat of making viral her obscene pictures, committed sexual intercourse. The victim realized that accused is sexually exploiting her as well as all extracting money under false promise. By getting rid of said harassment, the victim disclosed the things to her mother and sister who in turn advised her to file police report. Accordingly, the report has been lodged with the concerned Police Station.

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8. Shri Mardikar, learned senior counsel vehemently argued that the entire report is false and fabricated one. Though there was casual friendship in between the couple, the relationship does not travel beyond casual talks and Whats-app chats. Both being major, the accused realized that their relationship would not work, hence from 10.11.2020, he has disassociated himself from the victim girl. According to him, the victim pressurized accused to pay money and to bend him, she has filed false report.

9. Shri Mardikar, learned senior counsel took me through printouts of various Whats-app chats exchanged by duo. Particularly, he took me through Whats-app chats dated 01.12.2019 to impress that on that day, the accused was at Pimpri-chinchwad, Pune from where they had a casual talk. In other words, he would submit that no such incident as alleged occurred at Akola on that day. He also took me through mobile location of accused dated 01.12.2019 to show applicant's absence, at Pune. Likewise, in response to the allegation of sexual assault dated 18.03.2020, he took me through Whats-app

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location of accused to show that on that day, he was at Lonar and there was casual chat in between them. The same is the submission as regards to third occurrence dated 06.10.2020. He has produced Call Detail Record (CDR) of accused to impress that after 10.11.2020, there were no communication from accused with the victim.

10. In order to falsify the alleged occurrence dated 06.12.2020, he has produced a copy of order dated 23.11.2020 passed by the Additional Sessions Judge, Akola passed in pre-arrest bail application. In this regard, it is submitted that in the month of November 2020 itself, accused has applied for pre-arrest bail since the victim threatened him to involve in false case. Therefore, the accused had applied to the Court of Sessions of Akola for pre-arrest bail, however as the offence was not registered, the Court disposed the application with a direction to the Police to give 48 hours prior notice in case of registration of crime. The said endeavour was to impress that since the accused had applied to the Sessions Court on 23.11.2020 under fear of report of victim, it is highly improbable that still

thereafter on 06.12.2020, he would meet victim to exploit her.

11. In contrast to above submission, Shri Deshpande, learned APP would submit that there is no authenticity of the material produced by accused. According to him, the contents of First Information Report (FIR) *prima facie* discloses the commission of offence. He has also pointed towards some statements recorded by the Police to contend that the allegations of FIR are supported by said material. Primly, it is argued that in order to recover the mobile containing obscene material, applicant's custodial interrogation is necessary. Learned Advocate Shri Shirpurkar also made submission in resistance on the same line.

12. No doubt, bare reading of FIR discloses the commission of cognizable offence of rape. However, in view of the contention raised by the defence, it requires judicial application of mind. Admittedly, victim girl is major doing a job meaning thereby, having sufficient understanding. Undisputedly, through social media, they developed friendship which appears to be turned into love relationship. Though

the victim stated that applicant has sexually exploited her under false pretext of marriage, however entire thrust is on alleged threats given by accused about exposing her obscene photographs. In-short, according to victim, her consent was obtained under threat, hence the act of sexual intercourse was against her will and consent.

13. The victim has spelt out three instances of alleged sexual abuse. Learned counsel for the applicants tried to establish that all the instances are fabricated one since at the relevant time, the accused was somewhere else. By placing reliance on the decision of Supreme Court in case of ***Harshendra Kumar D. Vs. Rebatilata Koley and others, (2011) 3 SCC 351***. It is contended that it is open for the Court to consider the documents tendered by accused even at *prima facie* stage. In that regard, he has produced printouts of Whats-app chats and mobile location details. As regards to the first instance dated 01.12.2019 is concerned, the Whats-app print out shows applicant's location of Pimpari-Chinchwad. Moreover, it is contended that at the most, it is a case

of *consensual* sexual intercourse in between two majors.

14. The victim has specifically alleged that in the first week of of December 2019, applicant took her in rented flat behind Vaibhav Hotel, Akola. By administering intoxicant, he has exploited her and took her obscene video clips/photographs which were used on latter occasion for sexual exploitation. Learned APP took me through a statement of one 'X' dated 12.12.2020 wherein he stated that he took concerned flat on rent. It is his statement that somewhere in the month of September or October 2020, the applicant came to his flat along with the victim. Moreover, a statement of watchman of said building was also pressed into service. Pertinent to note that whole reading of the statement of watchman coveys that on and often, applicant and victim used to stay at flat for short period. The said material *prima facie* does not support the contention about so-called isolated instance but on the other hand, it supports the applicant's case about *consensual* theory.

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15. With the assistance of both sides, What-app chats were closely examined. The applicant has produced CDR to impress that on 18.03.2020 (second alleged incident), he never visited to Akola. At this juncture, learned APP has pointed towards the supplementary statement of victim wherein she has explained that though she referred the second incident of 18.03.2020 in FIR, however it took place during 10.03.2020 to 18.03.2020. Moreover, learned APP has shown CDR of applicant to impress that on 12.03.2021, he was at Akola. It is not out of place to say that as per FIR, second instance took place on 18.03.2020 but when tower location does not support the case by supplementary statement the things were tried to be ameliorated.

16. It is matter of record that after pursuing a threat of arrest, the applicant first time approached to the Sessions Court for grant of pre-arrest bail in the month of November 2020. The order dated 23.11.2020 shows that till that time offence was not registered, limited protection was given. In the wake of such position, *prima facie* it is difficult to accept that

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still thereafter on 06.12.2020, the applicant again met to the victim and did the things as alleged. Though there are allegations that the applicant took obscene pictures of victim and exploited her under threat, there is no reference in Whats-app chats about pictures or threats. Likewise, it is alleged that gold ornaments were taken by the applicant's parent, still in What-app chats does not bear reference, from which at list one can pursue such things. According to victim, on 06.10.2020, she had handed over marital cord (Mangalsutra) to the parents of accused. Admittedly, victim was unmarried and therefore, it is difficult to understand as to whose marital cord (mangalsutra) was handed over to the parents of accused. As per her own case, thereafter she disclosed the things to her mother and therefore, it is not possible that prior to discloser, she had either offered marital cord (mangalsutra) of her mother to the accused.

17. Learned counsel for the applicants would submit that a mere breach of promise to marry cannot be said to be a false promise. In this regard, he relied on the decisions of Supreme Court in cases of *Uday Vs. State of Karnataka, (2003) 4 SCC 46* and *Pramod Suryabhan*

***Pawar Vs. State of Maharashtra and another, (2019) 9***

***SCC 608.*** In-fact, the victim did not emphasise much on false promise to marry, but sexual exploitation on account of threats of making her obscene material viral. As stated above, *prima facie* the entire story narrated by victim appears to be doubtful which requires to be proved during trial.

18. It reveals that the applicant had attended concerned Police Station during pendency of this application. The Police have inquired with him of which a detailed questionnaire has been a part of case diary. According to learned APP, the accused has evaded to answer the questions, however reading of questionnaire does not give impression that accused gave evasive answers. It is but natural for accused to deny the allegation of rape, if in reality, it did not happen. However, from such answers, it cannot be inferred that he did not cooperate to the Police since no favourable answers were given.

19. While considering pre-arrest bail application amongst other grounds, it is to be considered whether the accusation has been made with the object of

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injuring or humiliating or settling the score. Moreover, the applicant has shown his willingness to tender his mobile handset, computer etc. The applicant is a government servant therefore, there are no chances of fleeing from the justice.

20. The case of parents of applicant – Akshay is concerned, it stands on better footing in view of the nature of allegations. Rather it can be said that there is no material against them to curtail their liberty. Already interim protection was granted to the applicants by this Court long back vide common order dated 23.12.2020. There is no complaint of misuse of liberty. Having regard to these aspects, applicants have made out a case for grant of pre-arrest protection. Needless to say that above observations are *prima facie* one, which has no impact on the trial. In view of that, following order:-

(I) Both applications stand allowed and disposed of.

(II) Ad-interim common order dated 23.12.2020 is hereby made absolute on the same terms and

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conditions with a rider that the applicants shall attend concerned Police Station as and when required

(III) Applicant – Akshay shall provide his mobile, computer or related material to the Police on their request.

(IV) Applicant – Akshay shall offer himself for medical examination, if directed so.

(V) Applicants shall not abscond or tamper the prosecution evidence in any manner.

**JUDGE**

Gohane.