

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

CRIMINAL APPLICATION (ABA) NO. 763 OF 2021

Vishal s/o Marotrao Shende
..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 S.A. Chaudhari, Advocate for applicant.
Shri S.D. Sirpurkar, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 25/11/2021

Heard.

2. This is an application seeking pre-arrest protection in Crime No.976 of 2021 registered with Awdhootwadi Police Station, District Yavatmal for the offence punishable under Sections 376(2)(n) of the Indian Penal Code.

3. While claiming bail, the applicant has denied the occurrence, but in the alternative submitted that it is a case of extra-marital relationship. Precisely, he would submit that the Prosecutrix was a major lady aged 33 years with whom he has relations with consent. When the victim's husband came to know the things, at his behest the false report has been lodged. According to the applicant, since it is a case of consent, it does not amounts to the offence of rape as alleged.

4. The non-applicant/State resisted bail by filing affidavit-in-reply. The incident as stated by the informant in the report has been reiterated. It is contended that the applicant has sexually exploited the victim -lady for the period of 7 years. Not only that, under threat of showing her nude photographs to her husband, the things were repeated. Considering the seriousness of the crime, bail is prayed to be rejected.

5. As per the Police report, the victim is a married lady aged 33 years. The applicant was staying in her neighborhood. The first alleged incident is of the month of April, 2013 and the last in the month of December 2020. The victim stated that, during the span of 7 years, the applicant under threat of showing nude photographs, sexually exploited her. The applicant submitted that the story narrated by the victim, is apparently improbable. Though the last alleged incident is of the month of December 2020, still for next one year, the report has not been lodged. In order to constitute an offence of rape, it is to be established during trial that the sexual act was against the will and consent of the victim.

6. Having regard to the age of victim and long span of incident *prima facie*, the story of consent can not be ruled out. Having regard to the nature of accusation, nothing is to be seized at the instance of the applicant. In view of that applicant's liberty can be

protected by directing him to join the course of investigation, hence, the following order :

- (a) Criminal Application stands allowed and disposed of.
- (b) Ad-interim order dated 02.11.2021 is hereby made absolute upon same terms and conditions.
- (c) Henceforth, the applicant shall attend concerned Police Station on every Sunday in between 12.00 noon to 02.00 pm till filing of the charge-sheet or for the period of 90 days whichever is earlier.
- (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.
- (e) Breach of either of condition would give rise to the prosecution to move this Court for cancellation.

7. The above observations are made on *prima facie* basis, which has no impact on the merits of trial.

JUDGE