

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

CRIMINAL APPLICATION (ABA) NO. 818 OF 2021

Rahul s/o Sudhakar Gurav
..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

Ms. Kirti Deshpande, Advocate holding for Shri R.R. Vyas,
Advocate for applicant.
Shri S.D. Sirpurkar, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 22/12/2021

Heard.

2. In anticipation arrest in Crime No.958 of 2021 registered with Tiroda Police Station, District Gondia for the offence punishable under Sections 354, 354-A, 354-B, 323 of the Indian Penal Code, the applicant has prayed for pre-arrest protection.

3. At the instance of girl aged 21 years, the report has been lodged. In said crime, the applicant was initially arrested and was released on bail by concerned Magistrate. Later on, on the strength, supplementary statement of the victim-girl, the Police have added Section 376 of the Indian Penal Code. In turn, earlier bail was cancelled by the Magistrate, therefore, the apprehension.

4. It is the victims case that the accused was a neighboring resident with whom she had love

relationship since three years preceding to the lodgement of First Information Report. On 12.11.2021, in the late midnight, the applicant telephonically called the victim-girl at secluded place, where she went. At said place, the applicant has demanded sexual favour on which the victim refused, hence, there was a scuffle in which her cloths were torn. At the relevant time, the victim's brother arrived on the spot hence the applicant fled. Thus, as per First Information Report, the allegations were restricted to the extent of outraging modesty of a woman.

5. After three days, the victim gave a supplementary statement disclosing so many things against the applicant. Precisely, she has stated that they had long standing relationship in which they had sexual relations in the year 2019 and on last occasion in the month of November, 2020. Out of their relations, the victim girl became pregnant, however, the applicant took her to the Medical Officer who gave some pills, resulting into abortion.

6. In supplementary statement, the victim has modified her version about incident dated 12.11.2021. This time she stated that at the relevant time, when she was alone at her house, the applicant telephonically called her, however, she refused. The applicant threatened her to kill and then had establishing forcible sexual relations with her. He also threatened her to kill and manhandled her.

7. The non-applicant/State resisted bail by pointing towards seriousness of the offence. The reply-affidavit contends the factual aspect and particularly, the contents of supplementary statement have been highlighted. It is stated that the applicant has committed a serious offence of rape. The victim's statement discloses that she succumbed to the wishes of the applicant on promise to marry, therefore, it amounts to rape.

8. Learned Counsel for the applicant has primely canvass that the initial version was only confined to the offence punishable under Section 354 of the Indian Penal Code. Moreover, it is submitted that, even if it is assumed that there were sexual relations, however, it was consensual act. It is argued that at the behest of family members, the victim-girl has projected after-thought theory of rape to falsely implicate the applicant. Lastly, it is submitted that there is no necessity to have custodial interrogation.

9. In legal parlance quick lodgment of report assumes significance since it eliminates the chances of concoction. The first version of the victim-girl is about assault and outraging her modesty. The First Information report itself states that the victim a major lady, was in long standing relationship with the applicant. Not only that at the behest of applicant, at midnight, she went to meet him at secluded place. It reveals that the brother of the victim arrived at said place on which the applicant fled, hence the report. In

said report, which was the first version, the applicant did not utter anything about past relations or the sexual assault at that time.

10. True, in supplementary statement, the victim has unfolded a long story about their sexual relationship. It is apparent that at the time of first allegation of sexual assault of the year 2019, the victim was major i.e. above 18 years of age. Supplementary statement *prima facie* does not convey that under false promise of marriage, the applicant enjoyed sexual pleasures. It is a matter of trial to establish that since inception the applicant was intending to sexually abuse the lady by giving false promise. Though in supplementary statement, the victim alleged that on 12.11.2021, the applicant committed forcible sexual intercourse, however, the said part of statement does not disclose as to at what place the said occurrence took place. Whether the explanation offered by the victim for non-disclosure of such crucial incident is probable or acceptable is a matter of trial.

11. Having regard to the nature of accusation and belated disclosure, the possibility of exaggeration cannot be ruled out. The victim was a major and admittedly, was in love relationship with the applicant. Unless, the prosecution proves that the applicant has obtained her consent with deceitful means the offence of rape would not attract. Moreover, the said version has not projected while filing initial report. Having regard to all these facts, applicant's liberty can be

protected by imposing certain conditions so as to facilitate the course of investigation. The above observations are restricted to the decision of the application, which has no impact on the merits of the trial. In view of that following order is passed :

- (a) Criminal Application stands allowed and disposed of.
- (b) Ad-interim order dated 01.12.2021 is hereby made absolute upon same terms and conditions.
- (c) The applicant shall continue to attend Police Station till filing of charge-sheet or for 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) The applicant/accused shall made himself available for medical examination, if any, when required by the Investigating Officer for the purpose of investigation.

JUDGE

Trupti

TRUPTI SANTOSHJI AGRAWAL

23.12.2021 18:32