

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

CRIMINAL APPLICATION (ABA) NO. 860/2021
(Sushil S/o Prakash Fulzele Vs. State of Maharashtra)

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

Court's or Judge's orders

Shri A. S. Ambatkar, Advocate for applicant.
Shri I. Damle, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 23.12.2021.

Heard.

2. In anticipation of arrest in Crime No. 783/2021 registered with the Police Station Jaripatka, Nagpur, District Nagpur for offence punishable under Sections 376(1), 376(2)(f), 354-A of the Indian Penal Code, the applicant prayed for pre-arrest protection. At the instance of report lodged by the victim aged 27 years, crime was registered. It is the prosecution case that the victim-lady being of marriageable age has put her profile in matrimonial website. On 03.04.2021, the applicant had contacted the victim on the basis of matrimonial profile and expressed his desire to marry. Thereafter, both were frequented with each other on telephone and also met at different places. It is informant's case that time and again, the applicant assured her that he would marry and accordingly called her to meet.

3. It is the informant's case that on 10.10.2021 at the behest of the applicant, she went to meet him at Nagpur. Thereafter, the applicant took her to rented

premises and had forceable sexual interrogation. According to informant, at that time, she resisted, however, the applicant assured for marriage and did the things. It is informant's case that on 14.10.2021, the applicant has blocked the victim on his mobile handset and then after 10 days, disclosed that he would marry with another lady. The victim realized that the applicant is not ready for marriage and therefore, the report.

4. It is a case of false promise to marry. Learned counsel for the applicant has produced WhatsApp chat to demonstrate that prior to 10.10.2021, the relations were already strange and therefore, the incident as alleged was impossible. Bare perusal of the WhatsApp Chat, nowhere firmly states that the relations were strained but it was usual conversant between young couple. It is submitted that as per First Information Report (FIR), the applicant met victim at her house, meaning thereby, there was no intention to deceive. The entire reading of FIR, bears contention that each time, the applicant assured her for marriage and had made advances at different places. According to the applicant, though alleged incident took place on 10.10.2021, FIR has been lodged after one month. Always, the factor of delay in lodgment of FIR is to be understood and appreciated on the basis of given facts and circumstances of the case. It is not a case of bodily offence to expect quick lodgment of FIR. The facts are such that though they had sexual intercourse on 10.10.2021, the victim lady waited for fulfillment of promise of marriage. When she realized that the applicant has blocked her and refused to marry, she had reported the matter to the Police. Having regard to the said fact, it

can not be said that one month can be construed as fatal to the prosecution case. It is the last submission that there are no antecedents against the applicant. I may say that this is a case of obtaining consent for sexual intercourse by deceitful means. In like cases, generally, there are no antecedents behind the accused.

5. Learned counsel for the applicant has placed reliance on certain observation made in para 6, 7 and 8 of the decision of this Court in case of **Mahesh Balkrishna Dandane Vs. The State of Maharashtra, 2015 ALL MR (Cri) 2805**. This Court has observed that every breach of promise to marry cannot be said either cheating or rape. It is further expressed that all these factors required to be considered while granting anticipatory bail in such cases. There can be no dispute about said proposition. However, in case at hand as observed above, the very contact between the couple is the foundation of matrimonial website and with such intention, the applicant met informant. Besides that each case has its peculiar facts therefore, being distinct factual aspects, above ratio would not assist the applicant in any manner.

6. Taking over all view of the matter, it reveals that it is not a case of love affair between the couple in which we can say that due to circumstances, the marriage became impossible. The facts are such that by noting marriage profile on matrimonial website, the applicant approached to victim, meaning thereby, since beginning, he contacted with her with a view to marry. Within few months, he made advances with the victim. Notably, after 8 days from alleged occurrence, the applicant has cut of

the relationship by blocking her on mobile handset and further expressed that he would marry with another lady. The *prima facie*, material does not indicate that this is a case of mere failure to perform to promise. Having regard to all above facts, custodial interrogation is necessary. In view of that, applicant is not entitled for pre-arrest protection. I may clarify that above observations are of *prima facie* in nature and the Trial Court shall not be influenced by these observation while deciding the matter on merits.

7. In view of above, application stands rejected and disposed of.

JUDGE

Gohane

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BHARAT
GOHANE

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by JITENDRA
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