

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1148 OF 2022

Somesh Prakash Gaikwad	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. P A. Kulkarni, Advocate for applicant
Mr. V. S. Badakh, APP for respondent – State
Mr. Jiwan J. Patil, Advocate for the informant

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**WITH
CRIMINAL APPLICATION NO. 2467 OF 2022**

XYZ	... Applicant
Versus	
The State of Maharashtra and another	... Respondents

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Mr. Jiwan J. Patil, Advocate for the applicant
Mr. V. S. Badakh, APP for respondent No.1 – State
Mr. P A. Kulkarni, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 06th SEPTEMBER, 2022

PER COURT :-

1. Criminal Application No. 2467 of 2022 is allowed. The complainant is permitted to assist the learned APP.

2. Heard. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested

in connection with Crime No.0528/2022, registered at Sadar Bazar Police Station, District Jalna, for the offences punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code.

3. The FIR has been lodged by the victim herself on 30.06.2022. It is her case that she was a third year student of Diploma in Civil Engineering. The applicant was her facebook friend. She got acquainted with the applicant in 2019. Acquaintance developed into friendship. There was emotional involvement as well. On 16.06.2019, by 5.00 p.m., the applicant had called her to meet him at 'Saraswati Mandir' at Jalna. She met him there. The applicant promised to marry her. Then the applicant once called her to a room at Buhannagar. He had sexual intercourse with the applicant there. When the victim had refused to submit to sexual intercourse, the applicant threatened her of committing suicide. About a year before registration of the FIR, the applicant had called her to Hyderabad for marrying her there in the form of Court Marriage (known term). The informant, therefore, went to Hyderabad. She stayed with him there for eight days in a room taken on rent. The applicant had sexual intercourse with her many a times there. Instead of marrying the informant, the applicant sent her back to Jalna. Thereafter again, he

took her to a lodge at Jamwadi. He had sexual intercourse with her there. Her father had learnt the same. Both, the applicant and the victim, were therefore brought to the police station from the lodge itself. Since the applicant took responsibility to maintain the victim, no police case was lodged. The applicant continued to sexually exploit the victim with a false promise of marriage. Last such incident took place on 29.06.2022. The applicant, on that day, refused to marry the victim. The victim realised to have been sexually exploited with a false promise of marriage. She, therefore, lodged the FIR.

4. The learned Advocate for the applicant would submit that the victim is major. It is consensual relationship. A false FIR has been lodged. The learned Advocate has placed on record an order dated 18.01.2022, passed by this Court (Nagpur Bench) in Criminal Application (ABA) No.21 of 2022, wherein, anticipatory bail was granted to an accused who was alleged to have committed rape on a false promise of marriage. According to the learned Advocate, the applicant is behind the bars since 30.06.2022. He, therefore, urged for grant of the application.

5. The learned APP and the learned Advocate representing the victim would submit that the investigation of the crime is still underway. The applicant has similarly exploited 2 – 3 other girls. A judgment of the Hon'ble Apex Court in the case of ***Anurag Soni vs State of Chhattisgarh – (2019) 13 SCC 1***, was relied on to submit that consent obtained with the false promise of marriage is no consent in the eye of law. Both of them, therefore, urged for rejection of the application.

6. Perused the FIR and the papers of investigation so far made. The victim is 22 years of age. Friendship between the applicant and the victim developed on facebook. Both of them got emotionally involved with each other. The applicant had sexual intercourse with her many a times. According to the prosecution, since day one of the friendship, the applicant had given a false promise of marriage and obtained the victim's consent for sexual intercourse. The Hon'ble Apex Court in the case of ***Anurag Soni*** (supra) has observed thus:

"10.2. *In Deepak Gulati v. State of Haryana (2013) 7 SCC 675, this Court observed and held in paras 21 and 24 as under:*

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear

from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

7. There could be no two views over what has been observed by the Hon'ble Apex Court. Admittedly, the applicant and the victim were emotionally involved with each other. Whether the applicant extended a false promise of marriage and obtained victim's consent for sexual intercourse, could only be unravelled during trial of the case. The observations made by the Apex Court in the case of **Anurag Soni** (supra) indicate that it was a matter arising from a judgment of conviction. This is an application for bail. It is reiterated that whether the the promise of marriage was false promise from its inception is a question of fact, to be decided during trial of the case. There is no material to indicate the applicant to have sexually exploited other women in a similar way. In view of this Court, pretrial detention of the applicant in the facts and circumstances of the case is unwarranted. This Court is therefore inclined to grant the applicant bail. Hence, following order:

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0528/2022, registered at Sadar Bazar Police Station, District Jalna, for the offences punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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