

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

CRIMINAL APPLICATION (ABA) NO. 21 OF 2022

Gulab S/o Laxman Meshram

...Versus...

State of Maharashtra, Through its Incharge/PSO, Police Station Patan, Distt. Yavatmal

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

Court's or Judge's orders

Shri R.J. Mirza, Advocate for applicant
Shri V.A. Thakre, A.P.P. for non-applicant/State

CORAM : SURENDRA P. TAVADE, J.
DATE : 18/01/2022

This is an application for pre arrest bail in Crime No. 138/2021, registered with Patan Police Station, District-Yavatmal for the offences punishable under Sections 376, 376(2)(n), 417 of the Indian Penal Code. Victim girl is aged about 24 years. She lodged First Information Report on 13/12/2021 wherein she contended that she is resident of village Gawara, Tq. Zari, Distt. Yavatmal. She completed her nursing course in the year 2017. The applicant is son of her cousin maternal uncle who resides at village Khapri, Tah. Zari, District - Yavatmal. It is alleged that when she was doing nursing course at Pune she had come to her house at village Gawara. She had come for Diwali festival, during that period, the applicant called her and they started talking to each other. Initially they were friends, thereafter the applicant proposed her for marriage. Thereafter, they developed love relationship. She completed her nursing course in the year 2017. She joined Niga Hospital, Pune. One day applicant came to Pune and met

her. He also suggested that they should marry. Thereafter in the month of January 2018 applicant came to see her. She was provided residence by the hospital. The applicant stayed with her during the night and had a sexual relations with her. Thereafter the applicant used to have a sexual relations with her.

2. Prior to lock-down in the month of January 2020, the informant met with an accident. Hence she had been to her village Gawara. The applicant used to visit her house. He used to stay in her house. The applicant was serving in Railway Department. He used to attend his duty from the house of the complainant. It is alleged that the applicant used to tell the parents of complainant that he would marry with the complainant. He also assured that after marriage of his sister, he would marry with the complainant. Therefore, the parents of the complainant did not object the visits of applicant to their house. It is alleged that the applicant used to tell complainant that he would marry her and therefore, the complainant used to allow him to have a sexual relations with her. It is alleged that due to the promise of marriage given by the applicant, she used to have a sexual relations with applicant.

3. On 24/11/2021 at about 1.00 p.m. applicant came to the house of the complainant and she was alone in the house. He had sexual relations with her. The applicant disclosed complainant that his parents are in hurry to settle his marriage and he requested her to send her parents to his

house for settlement of marriage. Accordingly on 08/12/2021, the parents of the complainant went to the house of the applicant. The father of the applicant told the parents of complainant that the applicant is not ready to marry with the complainant, hence they return back. The applicant came to know that on 13/12/2021 the applicant has engaged with one girl with village Zamkhola thereafter she came to Police Station and lodged the report.

4. On the basis of the First Information Report, it is contended that applicant is innocent. He had not committed any crime. There is delay in lodging the First Information Report. It is contended that the applicant never promised complainant to marry. It is contended that since last more than four years the applicant and complainant were in consensual relationship. The complainant was working as a nurse in hospital at Pune. It is contended that they were having relationship for long period. It is contended that applicant never had sexual relation with the complainant on the false promise of marriage. In fact, applicant never gave any sought of promise to complainant. Therefore the relationship between applicant and complainant were consensual. Hence no offence is made out against the applicant. It is contended that the custodial interrogation of the applicant is not required and therefore it is prayed that the applicant be released on bail in anticipation of arrest.

5. Notice of this application was issued to learned A.P.P. Learned A.P.P. has filed reply. It is contended that applicant on

the pretext of marriage had kept physical relations with the complainant. The complainant was referred to medical examination and report is submitted by Medical Officer. Her statement under Section 164 is also recorded. The applicant is absconding since the registration of crime. It is contended that on perusal of statement of victim, it is clear that the applicant on misconception of fact obtained the consent of the complainant and had sexual relations with her. Therefore, it is prayed that the offence is prima facie made out against the applicant and therefore application be rejected.

6. Perused the First Information Report.

7. Heard learned Counsel for the applicant and learned A.P.P. on behalf of State. In order to appreciate the submissions of the applicant one has to see the contents of the First Information Report. It is alleged against the applicant that applicant is cousin maternal brother of the complainant. The complainant and the applicant were having friendly relationship with each other since 2015-16. Thereafter applicant proposed the complainant for marriage in the year 2016. It is also contended in the First Information Report that the complainant completed her nursing course in the year 2017 and she was employed with Niga Hospital, Pune. The applicant had met her and promise her to marry. Thereafter in the month of January 2018 applicant again met the complainant thereafter, both of them stayed together in the residential house of the complainant. It is alleged that the applicant promised her to marry and thereafter had a sexual

relations with her and the said relations continued till January 2020. It is contended in the First Information Report that in the month of January 2020, the complainant met with an accident hence she went to her native place. The applicant was serving in Railway Department. He used to visit the house of the complainant and used to have sexual relations with her. It is also alleged that the applicant had also given an understanding to the parents of the complainant that he would marry complainant after marriage of his sister. It is also alleged that till 24/11/2021, the applicant was having sexual relations with the complainant. It also appears from the First Information Report that the applicant had invited the parents of the complainant for settlement of his marriage. Accordingly, the parents and other relatives of the complainant had been to the house of the applicant. But his father refused to settle the marriage of applicant with the complainant. Hence First Information Report came to be filed.

8. In view of the said allegations, it is to be seen whether the applicant had a sexual relations with the complainant on the pretext of marriage. No doubt, the complainant has specifically alleged in the First Information Report that when the applicant met her at Pune in the year 2017, he had proposed that they would marry. But it appears from the First Information Report that the applicant and the complainant had a love affair since 2016. But it appears that they had physical relations since January 2018 till November 2021. It also appears that the applicant used to reside in the house of the complainant at native place and used to have

sexual relations. The said relationship were known to the parents of the complainant. From the said averments in the First Information Report, the important features emerges as follows :

Once the relation between applicant and the victim who is the complainant was of a consensual nature, both of them were in the relationship for about four years. The applicant had expressed disinclination to marry the complainant which led to the registration of First Information Report. Therefore, it can be said that though there was promise of marriage one has to see whether the said promise was false since its inception.

9. On perusal of the First Information Report it appears that it does not on its face indicate that the promise by applicant was false or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the First Information Report that when applicant promised to marry the complainant, it was done in bad faith and intention to deceive her. The said fact is established from the long standing physical relationship between the parties. The applicant's failure to fulfill his promise to marry cannot be construed to mean, the promise itself was false. As soon as the parents of applicant refused the marriage proposal, the First Information Report came to be filed.

10. The learned Counsel for the applicant submits that the alleged consent given by the complainant for physical relationship was not the result of alleged promise to marry by

the applicant. Therefore there was no misconception of fact in the mind of the complainant. To buttress his point he relied on the ratio laid down in ***Pramod Pawar Vs. State of Maharashtra***, reported in ***(2019) 9 SCC 608***, wherein the Apex Court on the facts of the said case has summarized the legal position as under:

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

11. In present case also it appears that the complainant alleged that the applicant had proposed her in the year 2016 thereafter they had sexual relationship with each other since 2018 to 2021 continuously. Therefore it can be said that even though it is presumed that the applicant had given promise to marry her, there is no material on record to establish that the said promise was false since its inception.

12. The learned Counsel has also relied on the ratio laid down in the case of ***Sonu @ Subhash Kumar Vs. State of U.P*** reported in ***2021 SCC OnLine SC 181***, wherein the facts of the said case are similar to the facts of the present case. In the said

case also the appellant and the respondent were having physical relationship for long period. It was alleged therein that the applicant had given false promise of marriage. Hence the respondent continued her physical relationship with him and thereafter he refused to marry. In the facts of the said case, the Apex Court has held that there was no material on record to establish that the false promise was given since inception. In present case also there are allegations of false promise but on perusal of the First Information Report it appears that the complainant and applicant were having physical relations with their consent. There may be promise of marriage given by the applicant but looking to the long standing physical relationship, it does not mean that the applicant had sexual relations with the complainant on the basis of false promise of marriage. Therefore, in view of the above case laws, I am of the opinion that there is material on record to hold that the consent given by complainant for sexual relations with applicant was not simply based on promise to marriage. They had the consensual relationship. Therefore the applicant is entitled for pre arrest bail. Hence, I pass the following order:

- (i) Application is allowed.
- (ii) In the event of arrest applicant - Gulab S/o Laxman Meshram in Crime No. 138/2021, registered with Patan Police Station, District- Yavatmal for the offences punishable under Sections 376, 376(2)(n), 417 of the Indian Penal Code, he be released on

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bail on he furnishing PR. and SD Bond of Rs.15,000/-,
with one surety in the like amount.

(iii) The applicant/accused shall attend
concerned Police Station every day in between 10.00
a.m. to 12.00 noon for the period of three weeks.

(SURENDRA P. TAVADE, J.)

Jayashree..