

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

CRIMINAL APPLICATION (ABA) NO.276 OF 2022

Asif Khan Tayyab Khan

Versus

State of Maharashtra, through P.S.O., P.S. Buldhana City, Buldhana and another

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

Court's or Judge's Order

Shri S.G. Karmarkar, Advocate for the applicant.

Shri V.A. Thakare, A.P.P. for the non-applicant No.1/State.

Shri Bhushan Sachdev, Advocate for the non-applicant No.2/Victim.

CORAM : ANIL S. KILOR, J.

DATED : 17/06/2022

1. The applicant is seeking pre-arrest bail in Crime No.160 of 2022, dated 04.03.2022, registered with Police Station Buldhana (City), District: Buldhana, for the offences punishable under Sections 376, 420, 452 and 506 of the Indian Penal Code.

2. Shri Karmarkar, learned counsel for the applicant submits that the applicant has been falsely implicated in the alleged offence. He has pointed out that there is a inordinate delay in lodging the First Information Report (FIR) and there is no explanation given in the FIR for the same.

3. He further submitted that despite the fact that this Court while granting *ad-interim* anticipatory bail dated 22.04.2022, has observed that whenever the presence of the

applicant is necessary, he shall attend the concerned Police Station, however, he was never called by the Police. Thus, he submits that the custodial interrogation is not necessary.

4. On the other hand, Shri Thakare, learned APP opposes the present application and submits that it is not only the case of the rape but also of extraction of amount from the complainant and therefore, custodial interrogation is necessary.

5. Shri Bhushan Sachdev, learned counsel, who is assisting the prosecution submits that the complainant is receiving threats from the applicant. He further submits that it is a serious offence and therefore, the bail may not be granted to the applicant.

6. I have perused the Case Diary and also the contents of the First Information Report (FIR).

7. As per the report, the first incident of rape is on 24.08.2020 and date of complaint is 04.03.2022 i.e. after more than period of one and half years. From the allegation, *prima facie* it appears that there was consensual physical relation between the applicant and the complainant. As far as, the amount is concerned, *prima facie* it appears that it was given by the complainant voluntarily on certain promises of return of amount by applicant.

8. Moreover, though this Court had directed the applicant to attend the concerned Police Station as and when his presence is required, while granting *ad-interim* anticipatory bail on 22.04.2022, for last two months he was never called by the Police for investigation. It shows that custodial interrogation of the applicant is not required. In the circumstances, I pass the following order:

- a) The criminal application is **allowed**.
- b) Order passed by this Court on 22.04.2022, granting *ad-interim* anticipatory bail, is confirmed with modification that the applicants shall attend the concerned Police Station as and when his presence is required.
- c) The applicant shall not tamper with the prosecution witnesses.
- d) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- e) The applicant shall not enter into the vicinity of the Buldhana city, till the conclusion of the trial.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]