

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

CRIMINAL APPLICATION (BA) NO.550 OF 2022

Sachin s/o Khemdas Meshram **Versus** State of Maharashtra 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 Dhumale, counsel for the applicant.

Shri A.M. Kadukar, A.P.P. for the non-applicant/State.

Ms Kirti Deshpande, counsel for Non-applicant No.2 (appointed)

CORAM : ANIL S. KILOR, J.

DATED : 01/08/2022.

1. The applicant is seeking bail in Crime No. 254 of 2021, registered with Police Station Gadchiroli, District: Gadchiroli, for the offences punishable under Sections 376, 376(2)(n), 366, 420, 417, 506, 342, 323 of the Indian Penal Code.

2. Learned counsel for the applicant submits that the applicant is in jail from last more than one year and charge-sheet has been filed, hence, the further custody of the applicant is not necessary.

3. It is further submitted that even if the allegations made in the FIR are taken on its face value, as regards the offence under Section 376, 376(2)(n) of the Indian Penal Code, it can be seen that there was consensual physical relations between the applicant and the complainant.

4. He submits that considering the allegations and the FIR, it can be seen that Section 366 would not attract in this case.

5. Thus, he submits that considering the nature of allegations and the period the applicant has already undergone Police Custody, the applicant may be released on bail.

6. On the other hand, learned APP strongly opposed the present application and submits that during the investigation, it has come on record that the applicant has collected money from many persons on making false promise to provide employment.

7. It is further submitted that as the offence is serious, the applicant may not be granted bail.

8. Learned counsel for the victim, reiterates the submissions of the learned APP and submits that even it is not the case of the applicant that, there was love affair between the applicant and the complainant. Therefore, it is submitted that, it can not be said that there was consensual physical relations between the applicant and the complainant.

9. It is further pointed out that, the applicant was continuously giving promises to the complainant that he will return back the amount to the complainant, and therefore, no complaint was made to the Police, immediately after first incident.

10. I have perused the Charge-sheet and FIR.

11. The first alleged incident as per the victim, took place in the month of March 2019. Whereas, the offence came to be registered on 24/04/2021 i.e. almost after two years.

12. In this case, though the learned APP states that the applicant has collected money from many persons by making false promise to them to provide employment, however, there is no complaint made by any of such persons till date to police against the applicant.

13. As far as the case of the complainant is concerned, the allegations made in the FIR are sufficient to show that the complainant did not raised any voice against the applicant for about two years, during which period she was continuous in physical relations with the applicant. Thus, it appears that there was consensual physical relations between the applicant and the complainant.

14. Furthermore, as the charge-sheet has been filed, further custody of the applicant is not necessary. Further there is no likelihood that in near future the trial will commence. In the circumstances and in view of the judgment of the Hon'ble Supreme Court of India in the case of *Union of India V/s K.A. Nazim*¹, I am of the opinion that there is no point in keeping the applicant is in jail for uncertain period, otherwise it would amount to pre-trial punishment. Accordingly, I pass the following order;

1 (2021) 3 SCC 713

- a) The criminal application is **allowed**.
- b) It is directed that in the event of arrest of the applicant in Crime No. 254 of 2021, registered with Police Station Gadchiroli, District: Gadchiroli for the offences punishable under Sections 376, 376(2)(n), 366, 420, 417, 506, 342, 323 of the Indian Penal Code, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction village Kotgal, Tah. and Dist. Gadchiroli till the culmination of the trial, except for trial.
- d) The applicant shall attend the concerned Police Station on 1st and 16th of each month between 09.00 a.m. to 10.00 a.m. till the culmination of the trial.
- e) The applicant shall not tamper with the prosecution witnesses.

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

[ANIL S. KILOR, J.]