

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

CRIMINAL APPLICATION (ABA) NO.508 OF 2022

Hemant Hiranman Kumbhare

Versus

State of Maharashtra, through P.S.O., P.S. Jaripatka, Nagpur

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

Court's or Judge's Order

Shri A.D. Bhate, Advocate for the applicant.

Ms Shamsi Haider, A.P.P. for the non-applicant/State.

Shri B.L. Meshram, Advocate for the non-applicant No.2/victim.

CORAM : ANIL S. KILOR, J.

DATED : 15/07/2022

1. The applicant is seeking pre-arrest bail in Crime No.335 of 2022, dated 27.05.2022, registered with Police Station Jaripatka, District: Nagpur (City), for the offences punishable under Sections 376(2)(n), 323 and 506 of the Indian Penal Code.

2. Shri A.D. Bhate, learned counsel for the applicant submits that even if the allegations made in the FIR, are taken on its face value, there was consensual physical relation between the applicant and the victim. He submits that the first incident is of the year 2015, thus, there is a delay in lodging the complaint. He therefore, submits that considering the allegations made in the FIR, custodial interrogation of the applicant is not necessary.

3. He further points out that the applicant has attended the concerned Police Station as directed by this Court while granting *ad-interim* anticipatory bail. Accordingly, he prays for grant of pre-arrest bail.

4. On the other hand, Ms Shamsi Haider, learned APP strongly opposes the present application and submits that the allegations are serious and accordingly, she prays for rejections of the present application.

5. Shri B.L. Meshram, learned counsel for the non-applicant No.2/victim strongly opposes the application and submits that in a similar case, where the accused was constable and similar allegations were made against the constable, after granting bail by the trial Court, the Karnataka High Court cancelled it. He therefore, submits that the applicant may not be granted bail in this case.

6. He further points out that the applicant is pressurizing the victim and if he is released on bail, there is every possibility that he may tamper with the prosecution evidence. Accordingly, he prays for rejection of the present application.

7. I have perused the Case Diary, First Information Report (FIR) and reply of the State.

8. Even if the allegations made in the FIR, are taken on its face value, it can be seen that the first alleged incident took place in the month of June, 2015 whereas, the FIR came to be lodged on 27.05.2022 i.e. after almost seven years. The victim was knowing that the applicant is married and having children, thus it creates doubt as regards promise made by the applicant to marry the victim.

9. Thus, considering the allegations made in the FIR, *prima facie*, it appears that there was consensual physical relation between the applicant and the victim. In that view of the matter, I am of the opinion that custodial interrogation is not necessary, in this case.

10. As far as the apprehension expressed by the learned counsel for the victim, the same can be addressed by putting some stringent condition. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) Order passed by this Court on 08.07.2022, granting *ad-interim* anticipatory bail, is confirmed with modification that the applicant 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 State is at liberty to apply for cancellation of bail, in case, breach of condition.

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

[ANIL S. KILOR, J.]