

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

CRIMINAL APPLICATION (ABA) NO.793 OF 2022

Sohan Singh S/o Jaswant Singh .Vs. State of Maharashtra, through P.S.O., P.S.
Ballarshah, Tah. Ballarpur, Dist. Chandrapur 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 G.D. Dani, Advocate for the applicant.

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

CORAM : ANIL S. KILOR, J.

DATED : 09/12/2022

1. Heard.
2. The applicant is seeking pre-arrest bail in Crime No.1003 of 2022, registered with Police Station: Ballarshah, District: Chandrapur, for the offences punishable under Sections 376, 354A(1)(i), 341, 452 and 506 of the Indian Penal Code.
3. The prosecution story is that on 04.10.2022 the complainant who is aged about 39 years old, lodged the report stating that she is married and staying with her husband at Gorakshan Ward, Ballarpur. The applicant is her neighbor and therefore, they started talking with each other and a love was developed in between them. Thereafter, their love relationship continued and they were engaged in a physical relationship for quite some time. However, her family members got alert about the said relationship

therefore, she informed the applicant to discontinue the said relationship. However, the applicant was compelling her to continue the said extra marital affair. The applicant also alleged to have threatened her for the same purpose. Therefore, they were not talking with each other since last three months. She had also even blocked his mobile number. In the month of September, when there was nobody present in her house, the applicant entered inside and took knife of her kitchen and threatened her to kill her or himself. He took her forcibly to bedroom and committed sexual intercourse. Since he had threatened her, she had not disclosed the said incident to anybody. When she was going to office on 04.10.2022 at about 10.00 a.m. again the applicant stopped her and started talking with her. The applicant alleged to have threatened to kill her family members therefore, the complainant accordingly disclosed the incident to her husband.

4. The learned counsel for the applicant submits that there was a consensual relation and as such the ingredient of Section 375 are absent in this case. He further submits that there are no antecedents to the discredit of the applicant and further the applicant has been falsely implicated in the alleged offence.

5. It is submitted that, the allegation made in the First Information Report, that the applicant crossed the 5 ft. compound wall by jumping and by trespassing into her

house, he committed sexual intercourse with the prosecutrix against her consent, is improbable considering the medical condition of the applicant.

6. On the other hand, Shri Thakare, learned APP strongly opposes the present application. He submits that the allegations are serious and in the present case though earlier their were consensual relations, however, later on despite her repeated and strong resistance, the applicant by threatening her of dire consequences, committed sexual assault. The learned APP has pointed out from the case diary, the WhatsApp messages sent by the applicant to the friends of the non-applicant No.2, threatening of dire consequences.

7. On perusal of the case diary and considering the material collected by the Investigating Officer during the investigation, *prima facie*, sufficient incriminating material is there to connect the applicant with the alleged offence.

8. The learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of *Shambhu Kharwar Vs. State of Uttar Pradesh and another*¹.

1 2022 SCC OnLine SC 1032

9. The said judgment is of no help to the applicant for the reason that in the present case the non-applicant No.2 admits her consensual relation with the applicant for initial period of two years however, subsequently, when she resisted the applicant, the applicant did not stop but he forced her to continue the relation against her wish and committed sexual assault without her consent. There is sufficient material against the applicant which *prima facie* attracts Section 376 of the Indian Penal Code. Hence, I am not inclined to grant bail.

The criminal application is **rejected**.

JUDGE