

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (ABA) NO.166 OF 2023
Kaipdip Maroti Dongre Vs. State of Maharashtra and another

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

Court's or Judge's orders.

Shri M.V. Rai, Advocate for applicant.
Shri M.J. Khan, APP for non-applicant no.1/State.
Shri Amit Band, Advocate appointed for non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 13, 2023.

The present application is preferred by the applicant for grant of anticipatory bail in the event of his arrest in connection with Crime No.12/2023 registered with Police Station, Dhabha, District Chandrapur for the offences punishable under Sections 376(2)(n) and 417 of the Indian Penal Code.

2. The allegation against the present applicant is that he has indulged in sexual activities with the non-applicant no.2 on the pretext of marriage. It is further alleged that an engagement ceremony took place between them. However, subsequently, the present applicant entered into an another engagement and declined to marry with the non-applicant no.2. On the basis of said report, the police have registered the crime against the present applicant.

3. As per contention of the present applicant that there was love affair between them and the non-applicant no.2 stayed alongwith him for more than 3 ½ months. This false

report is lodged subsequently. His custodial interrogation is not required, nothing is to be recovered and he is already protected by granting ad interim protection considering the allegations against him. The interim protection granted to him be confirmed.

4. The said application is strongly opposed by the State on the ground that the applicant has promised to marry with her and subjected her to sexual assault. Under the said promise, the non-applicant no.2/victim has relied and believed on the false promise to marry with her, otherwise she would not have given the consent for the sexual relationship. Thus, *prima facie* material shows the involvement of the present applicant in the alleged offence. His physical is required for the medical examination as well as for seizure of clothes and prays for rejection of the application.

5. Heard learned counsel for the applicant Shri Rai. He submitted that the act of sexual relationship was consensual act and the victim on her own stayed with the applicant for more than 3 ½ months and now this false report is lodged. The custodial interrogation of the present applicant is not required. He is ready to cooperate with the investigating agency in the investigation and hence interim protection be confirmed.

6. Learned APP for the State Shri Khan vehemently submitted that considering the allegation against the present

applicant the application deserves to be rejected. Moreover, the physical custody of the present applicant is required for seizure of his clothes as well as for his medical examination.

7. Learned counsel for the non-applicant no.2 reiterated the said contentions and prays for rejection of the application.

8. Having heard both sides and on perusal of the entire investigation papers, it reveals that the victim was major at the relevant time. Recitals of the FIR also shows that there was a promise of marriage and the victim has consented for sexual relationship under the promise of marriage. It appears to be a case of breach of promise. Whether there was valid consent or consent was obtained under the said promise of marriage, is a matter of evidence. At this stage, it is apparent that there was a promise and said promise was breached by the present applicant. His custody is not required for the investigation purpose.

9. As far as the contention of the State and learned counsel for the non-applicant no.2 is concerned that his clothes are yet to be recovered, that can be taken care of by imposing certain conditions and he can be directed to hand over the said clothes and said period can be considered as his custody for the purpose of Section 27 of the Indian Evidence Act. Further, the applicant can be directed to appear before the investigating officer for the purpose of

medical examination. In view of that, I proceed to pass the following orders:

(i) The interim protection granted on 21.03.2023 is hereby confirmed on he executing PR bond in the sum of ₹25,000/- with one surety in the like amount.

(ii) The applicant shall appear before the investigating officer and shall make himself available for medical examination and shall undergo the medical examination. Further, he shall produce his clothes for the investigation purpose and that period will be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

(iii) The applicant shall attend the Police Station, Dhaba, District Chandrapur as and when required for investigation purpose.

(iv) The applicant shall not directly or indirectly induce, threaten, promise or pressurize any witnesses, who are connected with the crime.

(v) The professional fees of the learned counsel appointed for the non-applicant no.2 shall be quantified and paid, as per Rules.

With this, the criminal application is disposed of.

JUDGE

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