

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

CRIMINAL APPLICATION (ABA) NO.239 OF 2023

Shubham s/o Harish Karode

Vs.

State of Maharashtra through Police Station Officer, Police Station, Jaripatka, Nagpur

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

Court's or Judge's orders

Mr. Abhishek Shukla, Counsel for applicant.

Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/06/2023

1. The application is filed by the applicant for grant of bail in the event of arrest in connection with Crime No.806/2022 registered with Police Station Jaripatka, Nagpur, for the offence punishable under Sections 376(2)(n) and 376(2)(f) of the Indian Penal Code.

2. The applicant is apprehending arrest at the hand of police as crime is registered on the basis of report lodged by the victim aged about 23 years. As per her allegation, she is working in Gima Tesk Company at Hinganghat. In the month of February 2022, when she went to attend a marriage of her friend, she got acquaintance with the present applicant and thereafter, they developed the relationship. Thereafter, love relationship was also developed between them and the

applicant has proposed her for marriage. As per the allegations, on 07.05.2022 at 11.00 p.m., the applicant subjected her for sexual assault on the promise of marriage and thereafter, on several occasions he repeatedly committed act on the promise of marriage and subsequently, he declined to marry with her. Therefore, she approached to the Police Station and lodged the report.

3. As per the contention of the applicant that the FIR itself is false. No such relationship was developed between them. Merely because the applicant denied to perform the marriage with her, this false report is lodged by her. His physical custody is not required as nothing is to be recovered from him. He is already protected by granting ad-interim protection and he cooperated with investigating agency. Now, the investigation almost is completed. His custodial interrogation is not required and hence, he be released on bail in the event of arrest.

4. The said application is strongly opposed by the State on the ground that the allegation against the present applicant is of serious in nature. The applicant has under the misconception subjected the victim for sexual assault and thereby committed an offence. The custodial interrogation is required and hence, prayed for rejection of the application.

5. Heard learned Counsel Mr. Shukla for the applicant. He reiterated the contention and submitted that even the recitals of the FIR are taken as it is, no offence is committed by the present applicant as the physical relationship was by consent. In fact, there was no promise of marriage, merely because the applicant has not accepted the proposal of the victim, this false report is lodged. In support this contention, he placed reliance on **Ansaar Mohammad vs. State of Rajasthan** reported in **2022 SCC OnLine SC 886** wherein the Hon'ble Apex Court has held that merely because the long standing relationship is no longer working out, the FIR cannot be lodged under Section 375 or 376-D. He further placed reliance on **Madhav Krishna Vasave Vs. State of Maharashtra** reported in **2021 SCC OnLine Bom 833** and **Gulab Vs. State of Maharashtra, through its Incharge/PSO, Police Station Patan** reported in **2022 SCC OnLine Bom 268**.

6. He submitted that considering there was consensual relationship and in view of the observations of the Hon'ble Apex Court merely because the relationship is broken the crime cannot be registered under Section 375 and 376 of the Indian Penal Code, applicant can be protected granting anticipatory bail.

7. The learned APP strongly opposed the said application on the ground that serious allegations are made against the present applicant. The victim after registration of the crime was referred for the medical examination. After due investigation, it reveals that the applicant has obtained the consent under the misconception and under the promise of marriage. His physical custody is required and hence, bail application deserves to be rejected.

8. Having heard both the sides. On perusal of the FIR and the various statements recorded during the investigation, it reveals that the applicant and the victim got acquaintance with each other thereafter, friendship was developed between them and out of attraction there was sexual relationship between them. As observed by this Court as well as the Hon'ble Apex Court merely because the relationship came to an end the crime cannot be registered under Section 375 and 376 of the Indian Penal Code. Similar is the case in hand, here also the only allegation is that there was a promise and on that promise there was a sexual relationship. Victim is a grownup woman and knowing the consequences of her act. Considering the allegation against the present applicant, admittedly his physical custody is not required as nothing is to be recovered from him. Moreover, only for the interrogation purpose his custody is not required. The Investigating Officer can interrogate him even if he

is released on bail in the event of arrest. The various statements are already recorded by the Investigating Officer. The samples are already collected. Considering the same, the application deserves to be allowed by confirming the anticipatory bail granted to the applicant. Accordingly, I proceed to pass following order.

- (i) The application is allowed.
- (ii) The interim protection granted to the applicant by granting ad-interim anticipatory bail on execution of PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount, is hereby confirmed.
- (iii) The applicant shall attend Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- (iv) The applicant shall furnish his mobile/phone number, along with his address with address proof.
- (v) The applicant shall not induce, promise, threaten or pressurize any witnesses who are connected with the alleged crime and also shall not tamper with the prosecution evidence or hamper the investigation.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)