

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

CRIMINAL APPLICATION (ABA) NO. 270 OF 2023

Arbaj s/o Salim Khan Pathan

Vs.

State of Maharashtra, through its Police Station Officer, Police Station, Duggipar,
District Gondia and another

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

Court's or Judge's orders

Mr. N. R. Tekade, Counsel for applicant.

Mr. A. M. Kadukar, APP for respondent No.1/State.

Mrs. Sonali Saware Gadhave, Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/07/2023

1. The present application is filed by the applicant for grant of bail in the event of his arrest in connection with Crime No.146/2023, registered with Police Station, Duggipar, District Gondia for the offence punishable under Section 376 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of Police as crime is registered on the basis of report lodged by the victim on an allegation that she is resident of Balaghat (M.P.) and at present residing at the house of one Sukaiyyabano at Balaghat. She was in network marketing. She got acquainted with the present applicant and the present applicant was communicating with her regularly. He promised her for marriage and accordingly, they met at the house of maternal aunt of

the informant. He promised her for marriage and subjected her for sexual assault and subsequently, he denied to marry with her. On the basis of the said report, police have registered the crime against the present applicant.

3. As per the contention of the present applicant that no such incident of sexual relationship between them has taken place. With the false allegations, this false report lodged against him. As far as the investigation is concerned, he attended the Police Station and handed over his mobile phone and also appeared for the medical examination. Even if, the allegations are taken into consideration, merely because there is a breach of promise is not sufficient to attract Section 376 of the Indian Penal Code. Considering the allegation against him, as his cellphone is already recovered, he undergone the medical examination, therefore, his custodial interrogation is not required and he be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State on the ground that the nature of the offence is grievous one. The applicant has under the misconception subjected the victim for sexual assault and thereby committed an offence. The custodial interrogation is required and hence, the bail application deserves to be rejected.

5. The learned Counsel for the respondent No.2 – Victim raised the objection and reiterated the contention by saying that considering the gravity of offence, the application deserves to be rejected.

6. The learned Counsel Mr. Tekade for the applicant placed reliance on the order passed by this Court as well as in the case of **Ansaar Mohammad Vs. State of Rajasthan and another** reported in **2022 SCC OnLine SC 886** wherein it is held by the Hon'ble Apex Court that offence of rape FIR cannot be filed just because a long standing relationship is no longer working out and granted the pre-arrest bail. He submitted that considering the observations of the Hon'ble Apex Court in the present case also, even if, the allegations are taken as it is, there is only breach of promise and said breach of promise will not cover under the definition of rape. Hence, applicant be protected by granting anticipatory bail.

7. Having heard both sides and on perusal of the FIR. It is reveals that there was a promise of marriage and on the promise of marriage there was consensual sexual relationship between them. After perusal of the FIR, it reveals that the victim has consented for the sexual relationship as there was a proposal for the marriage by the present applicant. As

far as the investigation is concerned, the mobile phone of the present applicant is already recovered and it was sent for the medical examination. He undergone the medical examination. 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 the promise there was sexual relationship. The victim is a grownup woman and knowing the consequences of the fact. Considering the allegation against present applicant, admittedly his physical custody is not required as the cellphone is already recovered and he has undergone for the medical examination. As far as the interrogation purpose is concerned, his custody is not required. The Investigating Officer can interrogate him even if, he is released on bail in the event of his arrest. Considering the same, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the applicant by granting ad-interim anticipatory bail on execution of P.R. 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.

(URMILA JOSHI-PHALKE, J.)

Sarkate