



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (ABA) NO.554 OF 2023

Shashikant s/o Devmaan Patil Vs. State of Maharashtra, through PSO, PS,
MIDC, Nagpur.

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

Court's or Judge's orders.

Shri S.D. Chande, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant no.1/State.
Shri K. Rawandhe, Advocate for non-applicant no.2.

CORAM : M.W. CHANDWANI, J.
DATE : SEPTEMBER 29, 2023.

The applicant is apprehending his arrest in connection with Crime No.698/2023 registered with Police Station, MIDC, Nagpur for the offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860.

2. Heard learned counsel for the applicant, learned APP for the non-applicant no.1/State and learned counsel for the non-applicant no.2/victim. I have gone through the case diary.

3. Perusal of case diary transpires that the victim came in contact with the applicant and they were in relationship. Even they committed to marry. The family members of the applicant were considering the proposal of the marriage with the victim girl. On 09.07.2023, they visited the house of victim to see her, however, there were some resistance from the family of the applicant. It is contended in the FIR that the applicant was told the victim girl that he will convince his family members for marriage. As per the FIR, on

13.07.2023 the applicant took the victim girl to one hotel and after having liquor both of them stayed in the said hotel for one night. It is allegation of the victim girl that the applicant insisted for sexual favour as they are going to marry. The applicant had sexual intercourse with her. Thereafter, he refused to marry. The victim girl consumed iron tablets and therefore she was admitted in the hospital. On the complaint of victim, the aforesaid offence came to be registered against the applicant.

4. It is contention of the learned counsel for the applicant that the sexual intercourse was consensual and it is the victim who had called the applicant in a hotel. According to him, she was aware that the family members of the applicant has already opposed the marriage. Despite of it, she stayed in the hotel. Therefore, the applicant has been falsely implicated for alleged promise of marriage but according to him, the victim was aware that the marriage is not possible as the family members of the applicant was opposing and despite of that she took decision to engage herself in sexual intercourse with the applicant. Therefore, it is not the case of consent under misconception. To buttress his submission, he relied upon judgment of the Hon'ble Apex Court in the cases of *Uday Vs. State of Karnatka reported in (2003) 4 SCC 46* and *Pramod Suryabhan Pawar Vs. State of Maharashtra and another reported in (2019) 9 SCC 608*.

5. The learned APP assisted by learned counsel for the victim submitted that consent has been taken by the

applicant under misconception of fact. According to him, the applicant was aware that marriage proposal has been opposed by his family members and inspite of that he gave promise of marriage which itself goes to say that false promise was made. To buttress his contention, he relied on the decision of Hon'ble Apex Court in the case of *Naim Ahamed Vs. State (NCT of Delhi)* reported in **2023 (1) RCR (Criminal) 776**.

6. Perusal of case diary shows that the victim girl was aware that the marriage proposal was resisted by the family members of the applicant inspite of that she accompanied with the applicant to stay in the hotel and consumed liquor. The victim girl is aged about 29 years. The WhatsApp chat filed on record by the applicant shows that it is the victim girl who wanted to meet with the applicant. She was insisting to meet with her and on consistent persuasion the applicant met and stayed in the hotel. The fact that the victim was aware that her marriage is not possible with the applicant as family members of the applicant resisted the proposal of marriage with the victim girl, still she engaged herself in sexual intercourse with the applicant. Not only this, it appears that the applicant was ready to marry with her but there was opposition from the family of the applicant. In that circumstances, as held in *Uday, Pramod Pawar* and *Naim Ahmad* (supra) relied upon by the applicant and non-applicants, promise to marry with the victim girl is not significant. Considering the fact of the present case, a case is made out for grant of anticipatory

bail. So far as apprehension put forth by the learned APP regarding medical examination of the applicant is concerned, I think that can be taken care of by imposing certain conditions on the applicant. Hence, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.
- ii. In the event of arrest in Crime No.698/2023 registered with Police Station, MIDC, Nagpur for the offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860, **applicant – Shashikant S/o Devmaan Patil**, be released on anticipatory bail on furnishing P.R. Bond in the sum of ₹30,000/- with one solvent surety of like amount.
- iii. The applicant shall attend the concerned Police Station on every Tuesday between 10 am to 12 noon and cooperate in the investigation, till filing of the charge-sheet.
- iv. The applicant shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.
- v. The observations made in this order are prima facie. The trial Court shall not get influenced by the observations made in this order.

With this, the application is disposed of.

Wagh

JUDGE