



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

41 ANTICIPATORY BAIL APPLICATION NO. 1268 OF 2024

Vinay Vitthal GaikwadApplicant

VERSUS

The State of MaharashtraRespondent

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Mr. V. A. Dhakne, Advocate for Applicant.

Mrs. M. L. Sangeet, APP for the State.

Mr. S. P. Rathod, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 14th OCTOBER, 2024.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 0270/2024 registered with Mukundwadi Police Station, Dist. Aurangabad for the offence punishable under Section 376, 376(2)(n), 377 of the Indian Penal Code.

2. First informant is aged about 26 years. She stated that she got acquaintance with the Applicant about 3 to 3 ½ years back. There was a friendship between them. It is alleged that on 29.03.2021, she was taken out for roaming by the Applicant. She was induced to consume liquor. It is stated by her that on that day,

against her will, physical relations were established by the Applicant with her. It is stated that thereafter the Applicant promised her to marry and then there was continuous physical relationship between them. There is also allegation against the present Applicant of unnatural sex. Allegation is also made that he videographed the incidents. It is stated in the First Information Report that later on he has refused to marry her and thereafter got engaged with another girl. There is also statement that on 04.02.2024, there was a medical termination of pregnancy against her will.

3. Learned counsel for Applicant submits that the Applicant and the informant are major persons and that the present report is lodged after about 3 ½ years of alleged incident of forcible physical relationship on 29.03.2021. It is submitted that the report is lodged after the Applicant had lodged complaint against the informant with the police. It is his submission that this is a case of consensual relationship and as such offence of rape is not made out.

4. Learned APP opposed the application on the ground that the statement of informant indicates that under the false promise of marriage, physical relationships were established. She has also

drawn attention of the Court to the statement recorded of the informant by the Medical Officer.

5. Learned counsel for the informant has opposed the application on the ground that the first incident occurred with the informant was against her will. It is his further submission that since later on the Applicant had promised her of marriage, no complaint was lodged. With regard to the termination of pregnancy, it is his submission that due to pressure exerted by the Applicant, she did not object for the same. It is his submission that in the complaint made by the Applicant himself, it can be seen that there is a videography and photography of the incidents occurred between them. It is his submission that the vehicle in which the rape was committed on 29.03.2021 is yet to be seized so also the mobile phone. He placed reliance on the order of Division Bench of this Court in Criminal Appeal No. 963/2021 wherein it is held that if there is physical relationship established on false promise of marriage since inception, it amounts to rape.

6. Undisputedly, Applicant and informant are major. Informant at the time of filing of the report is aged about 26 years.

She, therefore, cannot be said to be of tender age in order to get misguided. The first incident has occurred in March 2021 in which it is said that physical relationship was non consensual, however, there is no complaint in this regard made by now. There is incident of termination of pregnancy on 04.02.2024. If marriage was to be performed between the Applicant and the informant, there was no question of terminating pregnancy. In this regard, it is also relevant to refer to the statement of the Doctor which clearly shows that termination of pregnancy was not out of compulsion but it was done willingly. It is thus clear that the fact as they were appearing in the order of Division Bench are totally different than the one in hand and as such said order has no application to the present case.

7. Since both the Applicant and informant were major and they had entered into physical relationship willingly, there is reason to believe that this is a case wherein the offence punishable under Section 376 of Indian Penal Code may not get attracted. Insofar as contention of learned counsel for the informant about recovery of the vehicle and mobile phone etc. is concerned, appropriate direction to the Applicant to appear before the Investigating Officer and to take in

custody for the purpose of recovery, if any, will suffice the purpose of investigation. Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of applicant in connection with Crime No. 0270/2024, registered with Mukunddwadi Police Station, Dist Aurnagabad, for the offences punishable under Sections 376, 376(2)(n) and 377 of the Indian Penal Code, he be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one surety in the like amount.
- (iii) He shall attend the concerned police station as and when called on written intimation.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate the investigating agency for further investigation.

(vii) Learned APP to communicate this order to the concerned Investigating Officer.

(R. M. JOSHI)
Judge

dyb