



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.118 OF 2024

(Suraj Dilip Dhuley Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.N. Ali, Advocate for the applicant.
Ms R.V. Sharma, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 11, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail. The applicant is apprehending arrest at the hands of police in connection with Crime No.605/2023 registered with Police Station Vasant Nagar, Pusad, District Yavatmal for the offence punishable under Sections 376(2)(n), 504 of the Indian Penal Code.

3. The accusation against the present applicant is on the basis of report lodged by the victim who is aged about 23 years that she got acquaintance with the present applicant who is from the same village. She is studying in Second Year of Bachelor of Arts and also preparing for the recruitment of police. Out of friendship, the present applicant took her on the pretext that he is having some love feelings for her and subjected for sexual assault at his uncle's house. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that there was a consensual relationship between the victim and the present applicant. The WhatsApp chat and their photographs shows that out of love affair they were together and out of said love affair she had consented for the physical relationship and now this false report is lodged as the said relationship is opposed by her parents. He submitted that as far as allegations regarding obscene photographs are concerned totally false. He is ready to cooperate with the investigating agency and ready to produce his mobile phone for the purpose of forensic analysis.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that the statement of the victim and the statement of the parents reveals that she is subjected for sexual assault by the applicant and her obscene photographs are obtained, for that purpose his custodial interrogation is required.

6. Learned Counsel for the applicant placed reliance on two decisions of the Honourable Apex Court in the case of *Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and anr. [AIR 2021 SC 1405]* and *Pramod Suryabhan Pawar Vs. The State of Maharashtra and anr. [2019 ALL MR (Cri) 3949 (S.C.)]*.

7. I have heard learned Counsel for the parties. Perused the recitals of the FIR and the investigation

papers. From the recitals of the FIR, it reveals that the victim and the applicant were friends and which developed into the love relationship. The photographs produced on record by the applicant also shows that there was love relationship between them. The WhatsApp chat which produced on record by the present applicant also substantiate the said contention regarding the love relationship. As far as obscene photographs allegation is concerned, except the statement of the victim there is no other material to substantiate the said contention. As far as custodial interrogation of the present applicant is concerned, which is not required considering the nature of the relationship between them. Learned Counsel for the applicant placed reliance on the decision of Pramod Suryabhan Pawar (supra) wherein the Hon'ble Apex Court dealt with the issue of consent and it is held that the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act. In another case Sonu alias Subhash Kumar (supra) it is held that accused allegedly committing rape on prosecutrix on

pretext of promise of marriage. Relationship between accused and prosecutrix was of consensual nature. No allegation that promise to marry was false at inception.

8. By applying the observation of the Hon'ble Apex Court here in the present case also the recitals of the FIR and the communication between the victim and the present applicant shows that they developed the love relationship between them and out of love relationship there was a physical relationship between them. As far as the false promise of marriage or the obtaining of obscene photographs are concerned, itself is not sufficient to send the present applicant behind bar. The aspect of seizure of the mobile phone can be dealt with by imposing some conditions on the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Suraj Dilip Dhuley in connection with Crime No.605/2023 registered with Police Station Vasant Nagar, Pusad, District Yavatmal for the offence punishable under Sections 376(2)(n), 504 of the Indian Penal Code, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall produce his mobile phone before the Investigating Officer and the said period would be considered his custody for the purpose of Section 27 of the Indian Evidence Act, 1872.

(iv) The applicant shall not enter into the vicinity of village Waltur, Taluka Pusad, District Yavatmal till the culmination of the trial.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*