



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

CRIMINAL APPLICATION (ABA) NO.139 OF 2024

(Mihir Vishwanath Sana Vs. State of Maharashtra thr. its PSO PS Ajni, Nagpur 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. V. S. Bhoyar, Advocate for Applicant.
Mr. M. J. Khan, APP for Non-Applciant No.1/State.
Mrs. Radha Mishra, Advocate (Appointed) for Non-Applciant No.2.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 3rd APRIL, 2024.

Apprehending the arrest at the hands of police in connection with Crime No.773/2023 registered with Police Station Ajni, Nagpur for the offence punishable under Sections 376, 384 and 506 of the Indian Penal Code, the applicant approached to this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by the victim on an allegation that as wife of her brother-in-law was pregnant and therefore, admitted in the hospital for the purpose of delivery. As the health of the new born child was serious, the baby was referred to the Medical College and Hospital Nagpur for further treatment. The victim also had been there with the wife of her brother on 16.04.2023. At the relevant time the applicant also came in the hospital victim

was not having any place to prepare her food and the applicant has offered her that his room is nearby to the hospital and she can prepare the food at the said place. Therefore, she went along with the present applicant along with her two children. After sometime her two children left the place and she was preparing the food. The applicant came from the back side subjected her for forcible sexual assault, and therefore, she lodged the report. On the basis of said report police have registered the crime against the present applicant. It is further alleged that the present applicant has blackmailed her and extracted the money from her by making her that if she denies to pay the amount he will make the her nude photograph viral, and therefore, the victim has paid the some amount.

3. During investigation, the Investigating Officer has recorded the statement of the victim and other witnesses and after completion of the investigation submitted charge-sheet against the accused.

4. The learned counsel for the applicant submitted that from the recitals of the statement of the victim it reveals that it was a consensual act there was a love affair between victim and the present applicant and out of which physical relation was there. Now investigation is completed and charge-sheet is filed and the custodial interrogation of the present applicant is not required.

5. The learned APP and the learned appointed counsel for the victim strongly opposed the said application on the ground that from the statement of the victim nowhere it reveals that there was a love affair between the victim and the present applicant. But it is apparent that as the applicant has offered her that she can prepare the food at her room and therefore, she accompanied him and by taking disadvantage of her loneliness in the room he subjected her for sexual assault. The learned APP also pointed out from the investigation papers that some money was transferred by Phone Pe to the present applicant which shows that she was blackmailed by the present applicant by threatening her that and if she does not pay the amount he will defame her. He further submitted that as per the allegation the applicant has obtained her nude photograph and the mobile phone of the applicant is yet to be seized.

6. After hearing the learned counsel for the applicant and after going through the investigation papers as far as the contention of the learned counsel of the applicant is that there was a love affair is not substantiated by the statement of the victim on any other statements. The submission of the learned APP is substantiated by the documentary evidence that some amount is transferred by the victim to the present applicant. As per the allegation he has obtained the nude photograph of the victim and threatened her that he would make it viral. Considering the same the mobile phone of the present applicant is a vital evidence to connect the present

applicant with the alleged offence. Admittedly, the consideration for grant of anticipatory bail and bail under Section 439 of Cr.P.C. are different. Considering the serious allegation against the present applicant that he has subjected the victim for sexual assault and also threatened her to make it viral the nude photograph. No case is made out for grant of pre-arrest bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order:

i] The application is rejected.

7. The fees of the appointed counsel be quantified and paid in accordance with the rules.

JUDGE