



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

CRIMINAL APPLICATION (ABA) NO. 153 OF 2024

Swapnil Baburavji Kinkar V/s 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. D.N. Mudgale, counsel for applicant.

Mr. M.J.Khan, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/03/2024.

1. Apprehending arrest at the hands of Police, in connection with Crime No. 63/2024 registered with Police Station Gadchiroli, District Gadchiroli for the offence punishable under Sections 376, 452, 506(b) of the Indian Penal Code, 1860. The applicant approached 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, who is aged about 49 years. On an allegation that, she got acquaintance with the present applicant on the Bus-Stand, and she informed the present applicant that she would help him in getting the job. The present applicant visited her room on 18/01/2024, and subjected her for forceful sexual assault. On the basis of said report, the police have registered the crime against the present applicant.

3. The learned counsel for the applicant submitted that with the false allegation the present applicant is implicated in the alleged offence. He submitted that it was a consensual act and the victim stayed along with the present applicant in one guest house and they also visited at Shegaon Temple. He also placed on record, the receipt of the said Guest House. Thereafter, he also placed reliance on the WhatsApp Chats. He further submitted that only to implicate the applicant falsely, the false report is lodged. In fact, the act of sexual activity is by consent of both the parties.

4. Learned APP for the strongly opposed the said application on the ground that, at this stage, the statement of the victim is sufficient to attract the provision against the present applicant. The victim has narrated the history before the medical officer, and also she is medically examined. Thus, the contention of the victim is substantiated by the medical report. In view of that, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR. From the recitals of the FIR, it reveals that she has alleged that the present applicant has dragged her and forcefully subjected her for sexual assault. The medical report shows no injuries are seen on the person of the victim. Considering the receipt filed on

record, it reveals that the act of physical activity was by consent. As far as the custodial interrogation is concerned, which is only required for obtaining the samples and the medical examination of the present applicant. For that purpose, the custodial interrogation of the present applicant is not required.

6. Considering the nature of the allegation and the material put-forth before the Court, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] In the event of his arrest, in connection with Crime No. 63/2024 registered with Police Station Gadchiroli, District Gadchiroli for the offence punishable under Sections 376, 452, 506(b) of the Indian Penal Code, 1860, the applicant – **Swapnil s/o Baburavji Kinkar** shall be released on anticipatory bail, on executing PR. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- b] The applicant shall appear before the investigation officer on 18/03/2024 and shall make himself available for medical examination and for obtaining the samples.

- c] The applicant shall not induce, threat or promise any witnesses, who are acquainted with the facts of this case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]