



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

CRIMINAL APPLICATION (BA) NO.297 OF 2024

(Chetan @ Chandrakant Ashokrao Sawale Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Mr. J.B. Gandhi, Advocate for the applicant.
Ms S. Kolhe, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MAY 2, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 05/02/2024 in connection with Crime No.85/2024 registered with Police Station Old City, Akola, District Akola for the offence punishable under Sections 376, 366, 417 and 506 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim aged about 19 years who alleged that she is residing along with her mother and she got acquaintance with the present applicant. Present applicant is a married person and he used visit her house and he promised her for marriage. On the promise of marriage, he subjected her for sexual assault and subsequently denied to perform the marriage with her. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the allegations are concerned which shows that the relationship between the victim and the present applicant was consensual in nature. The investigation papers further shows that she eloped with the present applicant, stayed along with him and the said allegation is not substantiated by the medical certificate as hymen is shown to be intact. Now, investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that considering that applicant is a married person who promised her for marriage and subjected her for sexual assault. It is not a consensual act but it is under the misconception, her consent is obtained, and therefore, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the recitals of the FIR and the investigation papers from which it reveals that from the acquaintance the love relationship was developed between the applicant and the victim. Admittedly, the applicant was a married person and it appears that he informed her that he will perform marriage with her. Whether that promise was a false promise or the consent is obtained

under the misconception is a matter of evidence. At this stage, considering the investigation is completed and *prima facie* it appears that the physical relationship between them is consensual in nature. Further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Chetan @ Chandrakant Ashokrao Sawale in connection with Crime No.85/2024 registered with Police Station Old City, Akola, District Akola for the offence punishable under Sections 376, 366, 417 and 506 of the Indian Penal Code, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.
- (iii) The applicant shall not enter into the vicinity of Kalyanwadi, Old City, Akola till the culmination of the trial.
- (iv) 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.

6. The application stands disposed of.
7. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*