



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

CRIMINAL APPLICATION (APPLN) NO. 18 OF 2023

XYZ in Crime No. 934/2022 Vs State of Maharashtra and another.

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

Court's or Judge's Order

Mr. A.S. Tiwari, counsel for applicant.

Mr. A.S. Ashirgade, Addl. PP. for non-applicant/State.

Mr. A.A. Zade, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/09/2024.

1. Present application is filed by the victim for cancellation of bail, which is granted to the non-applicant No.2, in connection with Crime No. 934/2022 registered with Police Station Saoner for the offences punishable under Sections 376, 376(2)(n), 376(2)(j) and 506 of the Indian Penal Code, 1860; Sections 4 and 6 of the Protection of Children from Sexual offences Act, 2012.

2. The crime is registered on the basis of a report lodged by the victim, who was aged about 17 years at the time of the incident. She alleged that when she was residing at Khurajgaon, she got acquaintance with the present applicant. Thereafter, friendship was developed between them, and they were communicating with each other. They have also exchanged the mobile number with each other. The applicant has promised her marriage and took her in a lodge and subjected her for sexual assault. He also threatened her that he would make the photographs and the videos viral.

Thereafter, he threatened her and performed the marriage with her. On the basis of said report, the police have registered the crime against the present applicant.

3. After registration of the crime, the applicant approached the Sessions Court for grant of bail. The Sessions Court has granted the bail by observing that the marriage was performed between the victims of the accused. It is further observed that even before the marriage, the complainant, who was 17 years of age, which is the age of understanding, and she was knowing the consequences of the act. Thereafter, there was a communication between the victim and the present accused and out of friendship, there was a physical relationship between them, and released the accused on bail, on condition that she shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

4. This application is filed for cancellation of bail on the ground that learned Sessions Court had not considered that consent of the victim is not relevant and used the discretion in favour of the accused by observing that there was a consensual relationship between both of them. In support his contention he placed reliance in the case of ***Satish Kumar Jayanti Lal Dabgar Vs State of Gujarat [(2015) 7 SCC 359]***.

5. Learned APP supported the said application and submitted that applicant has not shown any regard to the order passed by this Court and contravened the terms and conditions imposed.

6. Per contra, learned counsel for the accused strongly opposed the said application and submitted that the WhatsApp chats between the victim and present applicant show there was a love affair between them. Out of a love affair, there was a physical relationship between them, and they have performed the marriage. The photographs of the marriage sufficiently show that the victim at her own performed the marriage with the present non-applicant No. 2, and subsequently, she left the company of the present non-applicant and lodged this false report.

7. After hearing learned counsel for the applicant and learned counsel for the non-applicant No. 2, as well as learned APP for State, perused the recitals of the FIR as well as the reply filed by the non-applicant No. 2, and also perused the impugned order passed by the Sessions Judge. The recitals of the FIR show that the victim, who was 17 years old, i.e., on the verge of attaining the age of majority, got acquaintance with the non-applicant No. 2, and friendship was developed between them, which resulted in the love affair. Thereafter, they performed the marriage, and till then they performed the marriage, there was no complaint filed by the victim as to any force used by the present applicant. The WhatsApp chat between the victim and the non-applicant

No. 2 shows that there was a love affair developed between the victim and the non-applicant No. 2. The photographs of marriage are also on record, from which it nowhere reveals that any force was used by the present applicant for the marriage. It reveals from the photographs that, happily, she has performed the marriage with non-applicant No. 2, and subsequently, it is apparent that she left the company of the present non-applicant No. 2 and lodged the report.

The impugned order passed by the Sessions Court, has appreciated all these aspects and observed that, out of love affair, the victim had joined the company of the present non-applicant. There was a marriage performed between them, and a physical relationship was between them out of the love affair. Admittedly, the consent of the victim is not relevant as she is below 18 years of age, but while considering the sexual assault cases, especially which are arising out of a love affair, to be treated differently. It is also well settled that mere breach of promise for marriage is not sufficient to attract the provisions under Section 376 of the Indian Penal Code.

8. Furthermore, the Hon'ble Apex Court in the case of *Dr. Dhruvaram Murlidhar Sonar Versus The State Of Maharashtra & Ors. In Criminal Appeal No. 1443 Of 2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018) Decided On 22/11/2018* in para-20 observed that -

There is a clear distinction between rape and consensual sex. The court, in such cases, must very

carefully examine whether the accused had actually wanted to marry the victim or had malafide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise therefore sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any malafide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.

9. As far as the facts of the present case are concerned and from recitals of the FIR itself, it reveals that there was a physical attraction between them, the physical relationship was developed. As far as the cancellation of the bail is concerned, the considerations for grant of bail and cancellation of bail are different. While considering the application for cancellation of bail, the court has to consider whether the bail was granted by the court to the applicant by ignoring the relevant material which requires to be considered. Moreover, supervening and overwhelming circumstances are required for cancellation of bail. On perusal of the order passed by the Sessions Court, it reveals that the

Sessions Court has rightly appreciated the defence that the alleged incident occurred out of a love affair and the marriage was also performed in a temple.

10. Thus, considering all these aspects, the application is devoid of any merits and liable to be rejected. In view of that, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]