



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

CRIMINAL APPLICATION (ABA) NO. 273 OF 2024

Vijay s/o Shamrao Golekar 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. A.B. Mirza, counsel for the applicant.

Mrs. T.H. Udeshi, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/08/2024.

1. Apprehending the arrest at the hands of police, in connection with Crime No. 47/2011 registered with police station Manora, District Washim for the offence punishable under Sections 363 and 366 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. The allegation against the present applicant is on the basis of a report lodged by father of the victim girl alleging that on 27/04/2011 at about 07.00 p.m. his daughter, aged about 17 years, left the house on the pretext of attending nature's call and not return back. The learned counsel for the applicant submitted that the applicant and the victim have already performed the marriage, and they are residing together. Thus, out of a love affair, the victim joined the company of the present applicant. As far as the custodial interrogation is concerned, which is not required, as the alleged offence has taken place in the year 2011. In view of that, he be protected by granting anticipatory bail.

3. Learned APP strongly opposed the said application on the ground that though the marriage is performed by the present applicant with the victim, but applicant was absconding and proclamation was issued against him. In view of the decision of the Hon'ble Apex Court in the case of ***Srikant Upadhyay and others V/s State of Bihar and another [2024 SCC OnLine SC 282]***, the anticipatory bail is not maintainable, in view of that, the application deserves to be rejected.

4. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that out of the love affair, the applicant and the victim performed the marriage, and there was a physical relationship between them. But the facts on record shows that since 2011, the applicant was absconding, and a proclamation was issued against him. As soon as the applicant came to know that a proclamation was issued against him, he approached the Sessions Court for grant of anticipatory bail, which was rejected, and now he has approached this Court for grant of anticipatory bail.

5. Moreover considering the facts on record shows that, he was protected by granting ad-interim protection, but as far the submission of the learned APP that proclamation was issued against the accused/applicant and therefore, he was declared as a proclaimed offender. In view of the judgment of Hon'ble Apex Court in the case of ***Srikant Upadhyay and others*** referred (supra) wherein it is observed

that it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. It is further held by the Hon’ble Apex Court that, he reiterated that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.

6. In view of the above observations of the Hon’ble Apex Court, in the present case also, the applicant is already declared as proclaimed offender, and therefore question of considering his anticipatory bail does not arise, even though the victim and the applicant have performed the marriage. However, the learned Sessions Court can consider the application for bail on its own merits if the applicant approach the regular bail. Hence, the application for anticipatory bail deserves to be rejected. Accordingly, I proceed to pass the following order;

The criminal application is rejected.

[URMILA JOSHI-PHALKE, J.]