



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

CRIMINAL APPLICATION (ABA) NO. 274 OF 2024

Sumit s/o Sanjay Gawai 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

Ms. K.R. Giripunge, counsel h/f Mr.S.V. Sirpurkar, counsel for applicant.

Ms. Soniya Thakur, APP for non-applicant/State.

Ms. Archana P. Murrey, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/07/2024.

1. By this application, the applicant is seeking pre-arrest bail, in connection with Crime No. 228/2024 registered with Police Station Old City, Akola, District - Akola for the offence punishable under Sections 376(2)(n) of the Indian Penal Code, 1860.

2. Heard learned counsel for the applicant. She submitted that there was two years relationship between the victim and the present applicant, and by consent, there was a physical relationship. Now, a false FIR is lodged against him on an allegation that the applicant has promised her marriage, and now he is performing the marriage with another girl. He submitted that a mere breach of promise is not sufficient to attract the offence. The applicant is already protected by granting ad-interim protection, and thereafter, he has not misused the said liberty. In view of that, the

application deserves to be allowed by confirming the ad-interim anticipatory bail.

3. Learned APP and learned appointed counsel strongly opposed the said application on the ground that, from the recitals of the FIR, it shows that on the promise of marriage, the applicant has subjected her for sexual assault and is now performing the marriage with another girl. In view of that, the application deserves to be rejected.

4. After hearing learned counsel for the applicant and learned APP for the State and learned appointed counsel, perused the recitals of the FIR and other investigation papers, from which it reveals that the victim is in relationship with the present applicant from the last two years. There was a consensual relationship between both of them.

5. As far as the consensual sexual relationship is concerned, it is observed by the Hon'ble Apex Court in the case of *Dhruvaram Murlidhar Sonar vs The State Of Maharashtra, in Criminal Appeal No. 1443 Of 2018, (Arising out of S.L.P (Criminal) No.6532 of 2018) decided on 12/11/2018*, particularly in para-20 which reads thus;

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala-fide 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 with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a cases 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 his control was unable to marry her despite having every intention to do, such cases must be treated differently”.

6. In view of the above, the case for grant of pre-arrest bail is made out by the present applicant, in view of that, the interim protection granted to the present applicant deserves to be allowed. Accordingly, I proceed to pass following order:

- a] The interim protection granted to the present applicant by order dated 18/04/2024 is confirmed with similar terms and condition.
- b] The applicant shall attend the concerned police station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. till the charge-sheet is filed.
- c] The applicant shall not enter into the vicinity of Jetwan Nagar, Dhobi Khadan, Old City Akola till the culmination of the trial.

- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]