



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

CRIMINAL APPLICATION (ABA) NO.305 OF 2024
(Dhanraj s/o Ramesh Bhoyar 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.S. Mardikar, Sr. Advocate a/b Mr. A.A. Korpenwar, Advocate for
the applicant.
Mr. A.G. Mate, APP for the State.
Ms A.P. Murrey, Advocate (appointed) for the victim.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 18, 2024.

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.275/2024 registered with Police Station Hudkeshwar, Nagpur for the offence punishable under Section 376 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. Heard learned Senior Counsel for the applicant. He submitted that the FIR is lodged by the victim on an allegation that she got acquaintance with the present applicant in December, 2023 as she has received a message from mobile phone, and therefore, she made enquiry on the said mobile phone and it reveals to her that it was the applicant who has sent her message. It was disclosed to her that one person would commit a murder of her husband and he is the only person who can protect her husband. It is further alleged that on 05/02/2024 and 17/02/2024 on the pretext of saving her husband, he has

threatened her, took her in a lodging and boarding and committed sexual assault on her.

3. On the basis of said report, police have registered the crime against the present applicant. He submitted that as far as FIR is concerned which is lodged after 45 days of the incident and there is no explanation to that effect for the delay in lodging the FIR. He further submitted that during investigation, the statement of hotel Manager is recorded from which it reveals that there was no abnormal behaviour of the victim when she went in the said lodging and was present along with the accused. He submitted that from these circumstances it appears that it was a consensual relationship between both of them and subsequently, this false FIR is lodged by the victim. He submitted that as far as the custodial interrogation is concerned which is not required. The applicant has cooperated with the investigating agency. In view of that, he be protected by granting anticipatory bail.

4. He placed reliance on the order passed by this Court in ***Rahul Manohar Kamble Vs. State of Maharashtra 2018 SCC OnLine Bom 13124*** and submitted that in similar situation the applicant was protected by granting anticipatory bail.

5. Learned APP strongly opposed the application on the ground that by pressuring the victim, the applicant took her in one lodging and boarding and subjected her for sexual assault. The custodial interrogation of the

present applicant is required for the interrogation purpose as well as for obtaining the samples and the medical examination of the applicant.

6. Learned Counsel for the victim also endorsed the same contention and she submitted that the victim was admitted in the hospital after the incident, and therefore, she could not file the report at the earlier occasion. In view of that, the delay in FIR is not fatal to the prosecution. She further submitted that considering the gravity of the offence, custodial interrogation is required, and therefore, the application deserves to be rejected.

7. After hearing learned Counsel for both the parties. It is pertinent to note that the alleged incident of sexual assault was occurred on 05/02/2024 and 17/02/2024. The FIR is lodged on 08/04/2024. On going through the FIR admittedly no explanation is given by the victim, why the FIR is delayed.

8. On perusal of the investigation papers, it reveals that during investigation, the Investigating Officer has recorded the statement of the Manager of the said lodging and boarding which reveals that the victim and the present applicant approached to him and obtained one room and stayed in the said room. Admittedly, the statement of the hotel Manager nowhere reveals that he had observed any abnormal behaviour of the first informant. As far as the interrogation with the present

applicant is concerned which can be taken care of. From the statement of the Manager and the other witnesses as well as the statement of the victim which reveals that there may be consensual relationship between them, and therefore, the victim was along with him.

9. Admittedly, whether there was a consensual sexual intercourse or not is a matter of evidence. At this stage, whether custodial interrogation of the present applicant is required or not is to be seen. After going through the investigation papers it reveals that the custodial interrogation of the present applicant is not required as nothing is to be recovered from him. As far as the medical examination is concerned, the directions can be given to the applicant to attend the police station and the investigating officer can forward him for the medical examination. For that purpose his custodial interrogation is not required.

10. Considering the above facts and circumstances, it is a fit case wherein the discretion can be used in favour of the present applicant. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant - Dhanraj s/o Ramesh Bhoyar in connection with Crime No.275/2024 registered with Police Station Hudkeshwar, Nagpur for the

offence punishable under Section 376 of the Indian Penal Code, be released on anticipatory bail on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall appear before the Investigating Officer on 21/06/2024 and shall cooperate with the investigating agency.

(iv) The applicant shall report to the concerned Police Station as and when required by the concerned Investigating Officer.

(v) 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.

11. The application is disposed of.

12. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*