



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

CRIMINAL APPLICATION (ABA) NO.317 OF 2024

(Sachin s/o Vijaykumar Hiwarkar 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. S.G. Joshi, Advocate for the applicant.
Ms S. Thakur, APP for the State.
Ms K. Deshpande, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 21, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.262/2024 registered with Police Station Frezarpura, Amravati, District Amravati for the offence punishable under Sections 376(2)(n), 323, 504 and 506 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that the victim who is the grown up woman has lodged this report on an allegation that she was called by the present applicant in one hotel and thereafter administered her some stupefying substance and subjected her for sexual assault. He submitted that in fact there was long standing relations between the present applicant and the victim. The victim was fully aware that the applicant is married person and thereafter also she continued with the said relationship. Now, only to implicate the accused

falsely this false FIR is lodged. As far as the custodial interrogation is concerned which is not required. In support of his contention, he placed on record some photographs and the messages which were exchanged by the present applicant and the victim.

4. Learned Additional Public Prosecutor as well as learned Counsel for non-applicant No.2 strongly opposed the application on the ground that the applicant has obtained her obscene photographs and videos and showing the same and subjected her for sexual assault, therefore, his custodial interrogation is required. In view of that, the application deserves to be rejected.

5. I have heard both the sides and perused the FIR and the documents. The applicant has produced on record the messages as well as the photographs from which it reveals that the victim who is 30 years old woman has a consensual relationship with the present applicant. The Honourable Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018)*** in para number 20 which reads as under:

“20. 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 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 mala fide 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.”

6. In view of the above, the case for grant of pre-arrest bail considering that there was a consensual relationship knowing by the victim with the present applicant, the application of the applicant deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.

(ii) In the event of arrest, the applicant – Sachin s/o Vijaykumar Hiwarkar in connection with Crime No.262/2024 registered with Police Station Frezarpura, Amravati, District Amravati for the offence punishable under Sections 376(2)(n), 323, 504 and 506 of the Indian Penal Code, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the investigating agency.

(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.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)