



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

CRIMINAL APPLICATION (ABA) NO. 440 OF 2024

Sagar Shyam Chaure 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. J.S. Chilotra, counsel for the applicant.

Mrs. H.N. Prabhu, APP for non-applicant/State.

Ms. A.D. Kolhe, counsel (appointed) for complainant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/08/2024.

1. Apprehending the arrest at the hands of police, in connection with Crime No.200/2024 registered with Police Station, Malkapur City, District Buldhana for the offences punishable under Sections 376, 376(2)(n), 420, 415, 313 read with Section 34 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. Learned Counsel for the applicant submitted that the crime is registered on the basis of a report lodged by the victim, on an allegation that initially her marriage was performed on 15/05/2015, with one Pankaj Sadanand Ingle, and she is having a daughter from the said marriage. But the said marriage was dissolved on 15/02/2022, as the document was executed in respect of their divorce. Thereafter, she got acquaintance with the present applicant, the applicant promised her for marriage and subjected her for sexual assault on 08/01/2023.

3. It is further alleged that the applicant promised her that he would take the divorce from the wife and thereafter will perform the marriage with her. Thereafter, on 18/05/2023 the present applicant and victim came along with the Mangalsutra, and the marriage with the victim was performed in a temple. Thereafter, she resumed cohabitation at the house of the present applicant, but she was not treated well, and she was administered some pills; therefore, her pregnancy was terminated. It is further alleged that she was brought at her matrimonial house, and thereafter, the applicant informed her that he was coming to fetch her back, but he came at her sister's house and deny to take her back; on the contrary, he assaulted her sister.

4. Learned counsel for the applicant submitted that, as far as the allegations are concerned, which are only to extract the money. He submitted that the applicant had been to the house of the victim to fetch her back, but she did not come along with him. He further submitted that there was a consensual relationship between the victim and the present applicant prior to the marriage. As the victim was in a consensual relationship, the offence under Section 376 IPC is not made out. There is no false promise, as the applicant has already perform the marriage with the victim. In view of that, the applicant be released on anticipatory bail.

5. Learned APP strongly opposed the application on the ground that the victim was not only cheated by the present applicant, but she was subjected for forceful sexual

assault prior to the marriage. The applicant further promised her that he would obtain the divorce from his wife and thereafter perform the marriage, but he performed the marriage by garlanding her and subsequently ill-treating her. She submitted that the family members of the victim were also assaulted when they insisted the applicant to take her back. Thus, considering the entire allegation against the present applicant, the interim protection granted to the applicant deserves to be cancelled.

6. Learned counsel for the victim also endorsed the same contention, and she additionally submitted that, merely because the custodial interrogation of the applicant is not required and is not sufficient to protect him from grant of anticipatory bail. She also submitted that, considering the victim was given a false promise of marriage and subjected her for sexual assault, thereafter he performed the marriage, and within eight to ten days, she brought her back to her house and her pregnancy was also terminated by administering pills. Considering all these aspects, the application deserves to be rejected.

7. After hearing learned counsel for the applicant and learned APP for the State as well as learned counsel for the victim, perused the investigation papers, from which it reveals that initially the victim was married with one Pankaj Sadanand Ingle, and thereafter there was a divorce between them. Thereafter, she got acquaintance with the present applicant, and they were communicating with each

other. As per the allegation, the applicant promised her for marriage and subjected her for sexual assault. The photographs on record show that he has performed the marriage with the victim.

8. It is further alleged that the applicant has obtained nude photographs of the victim in his mobile phone. The investigating officer has already seized the said mobile phone from the applicant. However, the forwarding letter, which is addressed to the Director of Forensic Science, nowhere reveals that any incriminating photographs are found in the mobile phone of the applicant. The letter further shows that the mobile was in a switch-off condition, and the applicant is not having any mobile bills or is not aware of any I.M.E.I. number. Thus, at this stage, whether there were nude photographs or not is not evident. As far as the entire investigation papers are concerned, from which it reveals that there was a consensual relationship between the victim and the present applicant prior to the marriage.

9. As far as the consensual sexual relationship is concerned, it is observed by the Hon'ble Apex Court, in the case of *Dr. 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*, is appropriate and is applicable in the present case. In para -20 which reads thus:

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must

be 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 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 Indian Penal Code, 1860”

10. In view of the above, here in the present case, the victim was aware that the applicant was a married person, and in spite of that, there was a physical relationship between them. In view of that, it is apparent that there was a consensual relationship between the victim and the present applicant. In view of the above observation of the Hon’ble Apex Court, the applicant has made out a case for grant of anticipatory bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] In the event of arrest, in connection with Crime No.200/2024 registered with Police Station, Malkapur City, District Buldhana for the offences punishable under Sections 376, 376(2)(n), 420, 415, 313 read with Section 34 of the Indian Penal Code, 1860, the applicant – **Sagar Shyam Chaure** shall be released on anticipatory bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- b] The applicant shall attend the concerned police station on every Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.
- c] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, either by communicating with the victim or visiting the victim.
- d] The fees of the appointed counsel be quantified as per Rule.

The criminal application stands **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]