



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

CRIMINAL APPLICATION (BA) NO.605 OF 2024

(Anil s/o Gopal Kambdi Vs. The 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. L. Meshram, Advocate a/w Mr. S. Singha, Advocate for the applicant.
Mrs. S. Kolhe, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 9, 2024.

By this application, the applicant is seeking bail as he was arrested on 12/03/2024 in connection with Crime No.191/2024 registered with Police Station Hudkeshwar, Nagpur for the offence punishable under Sections 376 and 506(2) of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the victim aged about 54 years on an allegation that she is residing along with her mother and younger sister. Her husband is residing at Paoni as there is domestic dispute between them. On 11/03/2024 when she was sitting in her house along with her mother, present applicant came to her house and called her at his home for watching the TV and thereafter subjected her for forceful sexual assault. On the basis of said report police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that there was consensual relationship between the victim and the present applicant and subsequently victim has

lodged the report. He submitted that the history narrated before the Medical Officer also shows the same. The statement of the victim was recorded during the investigation. Now, the investigation is completed and charge-sheet is filed. As far as medical evidence is concerned which is not supported and substantiated the allegation. In view of that, the applicant be released on bail.

4. Learned APP strongly opposed the application on the ground that during investigation it revealed that victim was subjected for forceful sexual assault, offence is of a serious nature. Though investigation is completed and charge-sheet is filed but considering the nature of the offence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the relationship between the present applicant and the victim was of consensual nature, and therefore, she went at the house of the present applicant. Due to some dispute she has lodged the report regarding the said incident. As far as the observation of the Hon'ble Apex Court in such nature of the in the cases is relevant here in the case of *Dhruvaram Murlidhar Sonar Vs. State of Maharashtra [AIR 2019 SC 327]* wherein in para No.20 it is observed by the Hon'ble Apex Court that 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.

6. In view of the above, the case for grant of bail is made out by the applicant. Moreover, the investigation is now completed and charge-sheet is filed, further incarceration of the applicant is not required. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Anil s/o Gopal Kambdi in connection with Crime No.191/2024 registered with Police Station Hudkeshwar, Nagpur for the offence punishable under Sections 376 and 506(2) of the Indian Penal

Code, be released on 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 attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(iv) The applicant shall not enter into the jurisdiction of Hudkeshwar, District Nagpur police station, till culmination of the trial.

(v) The applicant shall furnish his address of his residence after releasing him on bail and shall furnish the names of his two relatives with their address proof before the trial Court.

(vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vii) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)