



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

CRIMINAL APPLICATION (BA) NO. 607 OF 2024

Sachin s/o Kalidas Meshram

Vs.

State of Maharashtra, Thru. PS Gadge Nagar, Amravati

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.S. Nayak, Advocate for applicant.

Mr. K.R. Lule, APP for non-applicant/State.

CORAM : SMT. URMILA JOSHI PHALKE, J.

DATE : 24.07.2024

The applicant came to be arrested on 29.05.2023 in connection with Crime No.501/2024 registered with Police Station Gadge Nagar, District – Amravati for the offence punishable under Sections 376, 377 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim aged about 30 years, on an allegation that, her marriage was settled with the present applicant and engagement ceremony was performed on 28.05.2023. On 04.06.2023, present applicant

visited her house and after meeting with her parents, he came in her bedroom and subjected her for sexual assault and harassment. She further alleged that on 11.06.2023, the applicant has called her at Nagpur, as she was not ready, she was forced by the other co-accused and the applicant has taken her in a lodge and subjected her for sexual assault. Thus, there was a repeated sexual assault by the present applicant and subsequently, no marriage was took place between them. On the basis of said report, police have registered the crime against the present applicant.

3. Mr. Nayak, learned counsel for the applicant submitted that it is not disputed that marriage was settled between the victim and present applicant. Subsequently the applicant met with an accident and therefore, the marriage was not performed. He placed on record the wedding card also and submitted that due to the accidental injuries sustained by the present applicant and marriage was not performed, there was no false promise of marriage or there was no cheating on the part of the present applicant but due to some circumstances, the marriage was not performed. As far as the allegation of sexual assault are concerned, which are false one

and therefore, no prima facie case is made out against the present applicant. In support of his contention, he placed reliance on the order of the Division Bench in Criminal Application (BA) No.806/2023 wherein in similar set of facts, the Division Bench has quashed the FIR against the accused. He submitted that as far as the offence under Section 376 is not made out against the present applicant. Moreover, now investigation is completed, charge-sheet is filed and further incarceration of the present applicant is not required.

4. Heard learned APP for the State, he strongly objected the application on the ground that after engagement ceremony, the victim was subjected for sexual assault by the present applicant and subsequently, not performed the marriage. Thus, the prima facie case is made out against the present applicant. Though, investigation is completed, there is every apprehension of tampering of the witnesses. In view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the

marriage between the victim and the present applicant was settled, engagement ceremony was performed, wedding card was also published. As far as the sexual assault is concerned which appears to be a consensual act. Investigation is already completed and charge-sheet is filed. As far as the marriage is not performed is concerned it appears from the medical reports placed on record that applicant met with an accident and that can be the reason for non-performance of marriage. In case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and anr.*** reported in ***(2019) 9 SCC 608*** wherein the Hon'ble Apex Court considered the legal position as to the consensual act and observed that to summarize the legal position that emerges from the above cases, the 'consent' of the woman with respect to Section 375 must involved an active and reasoned deliberation towards the proposed act. To establish whether the 'consent' was vitiated by 'misconception of fact' arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in a bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct

nexus to the woman's decision to engage in the sexual act.

6. In the light of the above facts of the present case and in the light of observations made by the Hon'ble Apex Court there is a clear distinction between the rape and consensual sex. The marriage was settled between the parties and there was physical relationship between them. The marriage was not performed due to some reasons which was not in the control of the present applicant. In fact, the record shows that the wedding cards were also printed. Considering this facts and considering now, investigation is already completed, charge-sheet is already filed. Further incarceration of the present applicant is not required. The application deserves to be allowed. Accordingly, I proceed to pass the following order : -

ORDER

(a) Application is allowed.

(b) The applicant **Sachin S/o Kalidas Meshram** shall be released on bail on executing PR bond of Rs.25,000/- with one surety in the like amount in connection with Crime No.501/2024 registered with

Police Station Gadge Nagar, District – Amravati for the offence punishable under Sections 376, 377 read with Section 34 of the Indian Penal Code.

(c) The applicant shall not enter into the vicinity of Gadge Nagar, Taluka and District - Amravati, till termination of the trial.

(d) The applicant shall attend the proceedings before the Special Court without seeking any exemption unless exceptional circumstances.

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

7. The application is disposed of.

(SMT. URMILA JOSHI PHALKE, J)