



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

CRIMINAL APPLICATION (ABA) NO.457/2024

Shubham Dilip Bhise Vs. State of Maharashtra thr. P.S.O., P.S. Washim, Tq. And Dist.
Washim and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for applicant
Ms Soniya Thakur, APP for respondent No.1/State
Shri S.K. Phaltankar, Advocate (appointed) a/w Shri P.M.
Pande, Advocate for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/07/2024

Apprehending the arrest at the hands of police, in connection with Crime No.308/2024 registered with Police Station Washim, District Washim, for the offences punishable under Sections 376(2)(n), 366 r/w Section 34 of the Indian Penal Code and under Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012, the applicant approached to this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of report lodged by the victim girl who was aged about 18 years at the time of lodging of the FIR and minor at the time of the alleged incident alleging that she got acquaintance with present applicant and she was residing in front of his house. Out of the acquaintance, there was love affair between them and the present applicant, on the promise of marriage, subjected her for sexual assault. On the basis of the said report,

police have registered the crime against the present applicant.

3. Learned Counsel Shri Sirpurkar submitted that, out of love affair, there was a physical relationship, victim was on the verge of attaining the majority. Once the victim and present applicant were seen together by the parents and the father of the victim pushed the present applicant, he sustained injury as his both legs were fractured and, therefore, this report came to be lodged. He submitted that whatsapp chats between the present applicant and victim and her statement as well as call details substantiated the said facts. He submitted that now investigation is completed and chargesheet is filed. The incarceration of the present applicant is not required, in view of that he be released on bail.

4. Learned APP for the State as well as learned Counsel Shri S.K. Phaltankar a/w Shri P.M. Pande, submitted that victim was below 18 years of age at the time of incident. Her consent is not relevant. She was subjected for sexual assault on the promise of marriage as well as by using force. Thus, considering the same, if applicant/accused is released on bail, he would tamper the prosecution evidence. In view of that application deserves to be rejected.

5. After hearing both the sides and on perusal of the investigation paper as well as the documents filed on record, the contention of the learned Counsel Shri Sirpurkar, is substantiated by the statement of the

victim as well as the whatsapp chats and call details which shows that there was acquaintance between the victim and the present applicant and out of love affair, there was a physical relationship. Admittedly, the victim was at the time of incident on the verge of attaining the age of majority. As far as the promise of marriage is concerned, the issue is settled by the Hon'ble Apex Court in the decision of **Dr. Dhruvaram Murlidhar Sonar v. The State of Maharashtra in Criminal Appeal No.1443 of 2018 arising out of S.L.P. (Criminal) No.6532 of 2018**, in paragraph 20, if appreciated, it 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 or 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 Penal Code, 1860.”

6. Considering the facts that the applicant and the victim both are teenagers and out of love affair and out of attraction, they had a physical relationship with each other. Thus, the act of physical relationship was not out of lust, but it was out of affection and love and, therefore, it should be treated as different view. Thus, 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:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, in connection with Crime No.308/2024 registered with Police Station Washim, District Washim, for the offences punishable under Sections 376(2)(n), 366 r/w Section 34 of the Indian Penal Code and under Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012, the applicant- **Shubham Dilip Bhise**, be released on ad-interim 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. to 1.00 p.m., till the culmination

of trial 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.

(v) The applicant shall not enter into the vicinity of the Yadav Lane, Maharana Pratap Chouk, Shukravar Peth, Washim, till the culmination of the trial.

7. The application is disposed of.

8. The fees of the appointed Counsel be quantified as per Rules.

JUDGE

R.S. Sahare