



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

CRIMINAL APPLICATION (BA) NO. 677 OF 2024

Suresh s/o Laxman Pedapalliwar Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.C. Jaltare, counsel for applicant.

Mr. S.A. Ashirgade, APP for non-applicant/State.

Mr. Vinay Sharma, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/09/2024.

1. The applicant came to be arrested on 20/05/2024, in connection with Crime No. 394/2024 registered with police station Gadchiroli, District Gadchiroli for the offence punishable under Sections 376(2)(n), 506 of the Indian Penal Code, 1860.

2. It is alleged by the informant, who is aged about 30 years, that her husband died on 07/05/2023 and thereafter, on 08/06/2023 when she was working in the agricultural field, at the relevant time the applicant approached her and expressed that he was having feelings for her and asked for sexual favors from her. On which she denied, but the applicant subjected her for sexual assault in the agricultural field, and thereafter, on various occasions, he subjected her for the sexual assault. Due to which, she was pregnant for seven months. The applicant has also administered her some tablets to terminate her pregnancy. On 11/05/2024, the

applicant, along with his wife, took the victim in a hospital, wherein he disclosed her name as Jamuna Suresh Pedpalliwar, which is the name of his wife, and admitted her and thereafter left the place and not returned towards her. On the basis of said report, police have registered the crime against the present applicant.

3. The learned counsel for the applicant submitted from the recitals of the FIR and from the investigation papers, it reveals that there was a consequential relationship developed between the victim and the present applicant, who is a married person. The victim was taken to the hospital by the present applicant and his wife, which sufficiently shows that the name of the wife is mentioned in the medical papers, only to hide the identity of the victim, as she is a widow. He further submitted that even the relationship appears to be accepted by the wife of the present applicant also, and therefore, she was along with the victim. He submitted that there is a clear distinction between the sexual assault against her will and the consequential relationship between them. He submitted that, now investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant is not required in view of that, he be released on bail.

4. Learned APP and learned counsel for the victim strongly opposed the said application on the ground that, taking disadvantage that the victim is a widow and the applicant is subjected her for sexual assault on various

occasions, which resulted into her pregnancy. It is submitted that we have to consider the apathy of the victim, who was subjected for forceful sexual assault, and subsequently, the present applicant left her in the hospital and not returned back. He submitted that from the statement of the victim, it reveals that she was subjected for sexual assault and there was no consent and even accepted that it was a consent; it was a misconception that he would perform marriage with her; considering the same, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that there was acquaintance between the victim and the present applicant, and a love relationship was developed between them. Admittedly, the applicant is a married person as well as the victim was a widow, there was a consequential relationship between both of them, which resulted into her pregnancy. The presence of wife of the applicant along with them is also sufficient to ascertain that she has accepted her relationship with the victim and the applicant, and therefore, she was along with the victim in the hospital. At this stage, whatever is submitted by the learned counsel for the applicant, the name of the victim is mentioned as Jamuna, which is the name of the wife of the present applicant may hide her identity, being she is a widow, and this act should not be public.

6. Moreover, this fact can be considered at the stage of trial. Now, the investigation is completed and charge-sheet is filed and considering the observation observed 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*** wherein it is observed that as thus:

“that there is a clear distinction between rape and consensual sex. The court, in such cases, must be very carefully examine whether the accused 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”

7. In view of the above observation of the Hon’ble Apex Court, considering the fact that the investigation is

completed and charge-sheet is filed, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The applicant – **Suresh s/o Laxman Pedapalliwar** shall be released on bail, in connection with Crime No. 394/2024 registered with police station Gadchiroli, District Gadchiroli for the offence punishable under Sections 376(2)(n), 506 of the Indian Penal Code, 1860, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- b] The applicant shall not enter into the vicinity of village Yewali, Tahsil and District Gadchiroli.
- c] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- d] The fees of the appointed counsel be quantified as per Rule.

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

[URMILA JOSHI-PHALKE, J.]