



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

CRIMINAL APPLICATION (BA) NO.675 OF 2024
(Shri Biren s/o Akan Timung Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Mr. N.G. Choubey, Advocate for the applicant.
Mr. S.A. Ashirgade, APP for the State.
Mr. A. Pande, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- SEPTEMBER 25, 2024.

The applicant came to be arrested on 19/07/2023 in connection with Crime No.323/2023 registered with Police Station Kamptee, District Nagpur for the offence punishable under Sections 376(2)(n), 315, 354-D, 294 and 506(2) of the Indian penal Code.

2. The crime is registered on the basis of report lodged by the victim on an allegation that when she was in a college the present applicant was stalking her. After some days he somehow procured the mobile number and started calling her on her mobile phone from a different numbers. On receiving such calls the victim and the present applicant got acquainted with each other. Thereafter the applicant has promised her for marriage and also represented himself that he is working in Army whereas he is from Kampur, State of Assam. It is alleged that the applicant has expressed his feelings for the victim and promised her for marriage. He took her in one temple and put Mangalsutra in her neck and by representing her

that he performed the marriage with her, subjected her for sexual assault. She further alleged that thereafter the applicant took her on various occasions in lodge and repeatedly subjected her for sexual assault which resulted into her pregnancy. Thereafter the applicant has pressurized her to abort the pregnancy for which she denied, and therefore, she was assaulted and abused due to which her pregnancy was terminated. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the allegations in the FIR are concerned from which it reveals that there was a consensual relationship between the victim and the present applicant. There was no false promise but by her own consent she has joined the company of the present applicant and visited the various lodge. She pointed out from the investigation papers that the statements of the Lodge owners are recorded and from which it nowhere reveals that even though victim was taken forcefully by the present applicant she has shown any displeasure before the employees of the said lodge. She submitted that entire physical relationship was developed between the victim and the present applicant out of love affair. She submitted that as far as the allegations regarding the termination of the pregnancy is concerned, the medical certificate which is on record shows that there was a tendency of termination of pregnancy. Her earlier pregnancy was also

terminated and the same is observed by the Medical Officer after examining her. She submitted that the observation of the Medical Officer shows that there was a history of early pregnancy failure. In view of early pregnancy failure, missed abortion patient and relatives were counseled for evacuation after taking the consent and thereafter the pregnancy was terminated. Thus, he submitted that the allegation that due to the assault by the present applicant the pregnancy was terminated is also falsified. Now, investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, the application deserves to be allowed.

4. Learned APP and learned Counsel for non-applicant No.2 strongly opposed the application and submitted that though recitals of the FIR shows that there was a love affair between the victim and the present applicant but the consent is obtained under the misconception that he has performed the marriage and subjected her for sexual assault. They further submitted that she was asked to believe that he has performed the marriage with her and thereafter took her at various lodge and subjected her for sexual assault. Due the ill-treatment at the hands of the present applicant, the pregnancy of the victim was terminated. Thus, if he is released on bail, he would tamper the prosecution evidence. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. The case is based on promise to marry and fall out of a broke up relationship. It appears that the victim who is a grown-up lady has developed relationship with the present applicant out of love affair. The statement of the victim further shows that the victim and the present applicant had stay in a lodge. The statement of the lodge owner is also recorded from which it reveals that the victim came in the lodge for three occasions and there was no displeasure shown by the victim when she came along with the present applicant. Thus, from the entire investigation papers it reveals that out of consensual relationship there was physical relationship developed. As observed by the Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018)*** in para number 20 which 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 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 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 IPC.”

6. Now, the investigation is already completed and charge-sheet is filed. As far as further incarceration of the present applicant is concerned which is not required, considering the circumstances under which the alleged crime is registered. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Shri Biren s/o Akan Timung in connection with Crime No.323/2023 registered with Police Station Kamptee, District Nagpur for the offence

punishable under Sections 376(2)(n), 315, 354-D, 294 and 506(2) of the Indian penal Code, be released on bail on executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall not enter into the vicinity of Panchsheel Nagar, Sai Society, New Yerkheda, Kamptee, District Nagpur till culmination of the trial.

(iv) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) 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 as well as the victim.

7. The contravention of any of the condition imposed by this Court would lead to cancellation of bail.

8. The application is disposed of.

9. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)