



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

CRIMINAL APPLICATION (ABA) NO.519 OF 2024
(Atul s/o Avinash Kalne 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. S.V. Sirpurkar, Advocate for applicant.
Mr. A.V. Palshikar, A.PP for the State.
Mr. J.B. Gandhi, Advocate for non-applicant No.2.

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

Apprehending the arrest at the hands of police in connection with Crime No.242/2024 registered with Police Station Akot (Rural), District – Akola, for the offence punishable under Section 376, 376(2)(n), 417, 506 of the Indian Penal Code, the applicant approached to this Court for grant of pre- arrest bail.

2. The crime is registered on the basis of report lodged by a grown-up lady, on an allegation that initially the marriage was performed but the said marriage was dissolved and she has obtained the divorce from her husband and staying alone at Shirsoli. She got acquainted with the present applicant through Facebook which resulted into the love affair. The applicant has subjected her for sexual assault on the promise of marriage and subsequently, has not performed the marriage. On the basis of the said report, police have registered the crime against the present applicant. It is further alleged that

present applicant has obtained the gold from her and he mortgaged the said gold in the Bajaj Finance and obtained the money on the basis of the said gold. Thus, she was duped by the present applicant by obtaining the valuable security from her.

3. Learned Counsel for the applicant submitted that from the recitals of the FIR itself introduced that the relationship between the victim and the present applicant was of a consensual nature. As far as the breach of promise is concerned, itself is not an offence. He submitted that considering the alleged incident of sexual relationship is out of consent, the custodial interrogation of the present applicant is not required. He submitted that as far as the obtaining of the gold is concerned it is not substantiated by any material. In view of that, the ad-interim protection granted to the present applicant deserves to be confirmed.

4. Learned APP and learned Counsel for the Victim strongly opposed the said application on the ground though victim is a grown-up lady but on the promise of marriage the gold ornaments are obtained from her which were mortgage and obtained the money. Moreover, the applicant has promised her for marriage, subjected her for sexual assault and not performed the marriage with her. Thus, the victim is duped by the present applicant. Hence, the bail application deserves to be rejected.

5. Heard learned Counsel for both the parties. Perused the recitals of the FIR, from which, it reveals that out of the communication on the Facebook the victim got acquaintance with the present applicant and love relationship was developed between them. From the statement of the victim it reveals that out of consent there was a physical relationship between them. As far as the false promise of marriage is concerned this aspect is considered 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. The another allegation made by the prosecution is that the applicant has obtained the gold ornaments from her and obtained the loan. During the investigation, the Investigating Officer has collected various documents in that regard from which it reveals that only one gold loan account is active and i.e. also in the name of the victim. Other gold loan accounts are already closed. As far as the account statement of the victim is concerned from which also nowhere it reveals that the victim has transferred some amount to the present applicant. Thus, as far as the handing over of the gold ornaments are concerned which is not substantiated by any material which is collected during the investigation. Thus, considering the nature of the relationship between both of them, the ad-interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.

(ii) In the event of arrest, the applicant - Atul s/o Avinash Kalne in connection with Crime No.242/2024 registered with Police Station Akot (Rural), District – Akola, for the offence punishable under Section 376, 376(2)(n), 417, 506 of the Indian Penal Code, be released on anticipatory bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) 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. The Investigating Officer shall issue notice in advance to the present applicant when his presence is required for the investigation purpose.

(iv) The applicant shall not in any manner contact with the victim and shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

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

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)