



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

CRIMINAL APPLICATION (ABA) NO. 551 OF 2024

Nitin Ramdasrao Badarkhe 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. B.K. Suchak, with Mrs. Anandani, counsel for applicant.

Mrs. Sneha Dhote, APP for non-applicant/State.

Mrs. Archana P Murrey, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/09/2024.

1. By this application, the applicant is seeking pre-arrest bail, in connection with Crime No.283/2024 registered with Dabki Road Police Station, Akola for the offence punishable under Section 376, 376(2)(n), 341, 323 and 506 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of report lodged by the victim woman on an allegation that she got acquaintance with present applicant, as present applicant is running a motor driving school and he used to communicate with her. On 29/01/2024, the applicant by forcefully took her at his village, and subjected her for sexual assault and, thereafter, on multiple occasions, he has subjected her for sexual assault, which resulted into pregnancy. On the basis of the same, police registered the crime.

3. Learned counsel for applicant submitted that out of the acquaintance, they developed friendly and physical relationship out of consent. Merely because, the applicant

has not fulfilled the demand of the victim, this false FIR is lodged by the informant. He submitted that, considering that his custodial interrogation is not required and the relationship between the present applicant and the victim is out of consent, he is protected by granting ad-interim anticipatory bail.

4. Learned APP and learned counsel for the victim strongly opposed the application on the ground that by using force, present applicant has subjected the victim for sexual assault, in view of that, the application deserves to be rejected.

5. After hearing the learned counsel for applicant and learned APP and learned counsel for the victim, perused the recitals of the FIR, as well as the investigation papers from which it reveals that out of acquaintance victim went along with present applicant. There was physical relationship between the them out of the consent.

6. Moreover, the observations of the Hon'ble Apex Court in case 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.”

7. In the light of the above, the case for grant of anticipatory bail is made out by the present applicant. In view of that, I proceed to pass the following order:

ORDER

- (i) The interim protection granted to the present applicant by order dated 29/07/2024 is hereby confirmed, subject to the condition that applicant shall attend the concerned police station once in a week on every Monday between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet.

- (ii) 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.
- (iii) The applicant shall not enter into the vicinity of the Wankhede Nagar, Dabki Road, Akola till the culmination of the trial.
- (iv) The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]