



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

CRIMINAL APPLICATION (ABA) NO. 564 OF 2024

Aniket s/o Ambadas Chavan 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. P.R.Agrawal, counsel for applicant.

Mrs. C.A. Lokhande, APP for non-applicant/State.

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

1. Apprehending the arrest at the hands of police in connection with Crime No.347/2024 registered with Police Station Daryapur, District-Amravati, for the offence punishable under Sections 376(2)(n), 504 and 506 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. Heard learned counsel for the applicant, who submitted that from the recitals of the FIR itself, it reveals that there was a consensual relationship between the present applicant and the victim. Both are major, and out of consent, there was a physical relationship. As far as the custodial interrogation is concerned, which is required for the medical examination and seizure of the mobile phone, for which the applicant has already cooperated with the investigating agency, his mobile phone is already seized, and he has also make himself available for the medical examination. In view of that, the interim protection granted to the present applicant deserves to be confirmed.

3. Learned APP strongly opposed the said application on the ground that, on the promise of marriage, the victim was subjected for sexual assault, and therefore, custodial interrogation of the applicant is required, considering the gravity of the offence. In view of that, the application deserves to be rejected.

4. After hearing the learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the investigation papers, from which it reveals that there was acquaintance between the victim and the present applicant, which resulted into their friendship. Thereafter, the applicant has promised her for marriage and on that count, there was a physical relationship between them. The statement of the victim as well as the history narrated by her before the medical officer suggest that there was promise from the applicant to perform the marriage, which was not fulfilled, and therefore the FIR came to be lodged.

5. Moreover, this aspect is already considered by the Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra in Criminal Appeal No.1443/2018 arising out of SLP (Criminal) No.6532/2018***, wherein in paragraph No.20 of the said judgment, the Hon'ble Apex Court observed 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

malafide 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.”

6. In view of above, the applicant has made out a case for grant of anticipatory bail, in view of that, I proceed to pass the following order: -

- a. In the event of the arrest in Crime No.347/2024 registered with Police Station Daryapur, District – Amravati, for the offence punishable under Sections 376(2)(n), 504 and 506 of the Indian Penal Code, the applicant- **Aniket s/o Ambadas Chavan**, shall be released on anticipatory bail on executing PR bond of Rs.25,000/- with one surety in the like amount.

- b. The applicant shall attend the concerned Police Station as and when required for further investigation if the investigating officer thinks fit.
- c. The applicant shall not tamper, induce, any witnesses who are acquainted with the facts of the case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]