



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

CRIMINAL APPLICATION (BA) NO.748 OF 2024

Shubham s/o Laxman Tote
Vs.

State of Maharashtra, Through Police Station Officer, Pathrot Police
Station, District Amravati and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. S. Khushalani, Counsel for the applicant.
Mr. C. A. Lokhande, APP for non-applicant No.1/State.
Ms. Aastha R. Sharma, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/10/2024

1. The applicant came to be arrested on 15.06.2024 in connection with Crime No.224/2024, registered with Police Station Pathrot, District Amravati for the offences punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the victim aged about 20 years on an allegation that she is residing at Amravati along with her family members. Since last one year she residing along with her brother. In the year 2022, her friend came to her along with Ishwar Kishor. Her friend informed that the present applicant likes her and also asked for her mobile number. She exchanged the mobile number and thereafter, she received the call from the present applicant. They acquainted with each other, thereafter, they started

meeting each other which resulted into love relationship. It is alleged that on 21.03.2024 when she was alone in the house, the present applicant came at her house and on the promise of marriage subjected her for sexual assault. Thereafter, on several occasions, he visited her house and subjected her for sexual assault which resulted into her pregnancy. Subsequently, the applicant denied to perform marriage with her and therefore, she approached the Police Station and lodged the report.

3. Heard learned Counsel for the applicant who submitted that from the statement of the victim itself it reveals that it was a consensual act, the victim is a grownup lady and out of a love affair, they attracted towards each other and physical relationship was developed between them. Mere breach of promise is not sufficient to attract the provisions of Section 376 of the Indian Penal Code. Now, the investigation is already completed and charge-sheet is filed. As far as the further incarceration of the applicant is concerned, which is not required. In view of that, he be released on bail.

4. Learned APP and learned appointed Counsel for the non-applicant No.2 strongly opposed the said application on the ground that since inception there was an intention to cheat the victim and therefore, promise was given and subsequently, the applicant denied to perform the marriage with

her. The applicant has subjected her for sexual assault on the promise of marriage. In view of that, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel for the non-applicant No.2, perused the investigation papers. The FIR is lodged on the basis of the report lodged by the victim girl, wherein she has alleged that the love relationship was developed between them. The present applicant visited her house, promised her for marriage and subjected her for sexual assault. Her statement under Section 164 of the Code of Criminal Procedure is also recorded wherein she has reiterated the said contentions. During the investigation, she was referred for medical examination. During the medical examination, it revealed that she is pregnant. Thus, apparently, it reveals that out of a love affair both attracted towards each other and the physical relationship was developed between them.

6. The Hon'ble Apex Court in the case of **Dhruvaram Murlidhar Sonar Vs. State of Maharashtra** in **Criminal Appeal No.1443/2018 arising out of SLP 6532/2018** particularly in para No.20 observed that:

"20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must 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 accused 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 observations, if the facts of the present case are considered, admittedly it shows that there was a love affairs between the victim and the present applicant and out of the attraction towards each other, there was a physical relationship developed between them. Thus, considering the circumstances under which the alleged incident has taken place and considering the fact that now the investigation is completed and charge-sheet is filed, the application deserves to be

allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
 - (ii) The applicant **Shubham s/o Laxman Tote** shall be released on bail in connection with Crime No.224/2024, registered with Police Station, Pathrot, District Amravati for the offences punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code, on executing 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 Gadsimba, Taluka Achalpur, District Amravati, till culmination of the trial.
 - (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
 - (v) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
8. The fees of the appointed Counsel be quantified as per rules.
9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)