



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

CRIMINAL APPLICATION (BA) NO.881 OF 2024

(Rushikesh s/o Naresh Siramwar Vs. The 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. A.A. Naik, Sr. Advocate a/b Mr. M. Deo, Advocate for the
applicant.

Mr. K.R. Lule, APP for the State.

Ms M.M. Shesh, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- OCTOBER 17, 2024.

By this application, the applicant is seeking bail as he came to be arrested on 29/08/2024 in connection with Crime No.383/2024 registered with Police Station Dhantoli, Nagpur for the offence punishable under Sections 69, 78, 79, 296, 351(3), 352, 115, 356(2) of the Bharatiya Nyaya Sanhita, 2023.

2. The crime is registered on the basis of the report lodged by the victim aged about 27 years on an allegation that she got acquaintance with the present applicant when she was studying in 10th standard in the year 2013. Thereafter they started communicating with each other and their friendship developed into love affair. As per her allegation, in the year 2017, the applicant has called her at his house, and therefore, she visited his house. At the relevant time, she was subjected for the sexual assault by the present applicant by promising her for marriage and also obtained her obscene photographs.

Said relationship was continued till 2022, thereafter the applicant started suspecting her character and on that count, there was dispute between them. It is alleged that on 16/09/2022 when she was in the office, at that time present applicant visited her office abused her, insulted her and humiliated her. On 24/08/2024 also the applicant has called her to meet him and threatened her that he would make her photographs viral. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Senior Counsel for the applicant submitted that as far as the allegation that she was subjected for the sexual assault by deceitful means is not attracted as the statement of the victim herself shows that there was a love affair between her and the present applicant and out of that love affair, the physical relationship was developed between them. He submitted that even the history narrated before the Medical Officer shows that they are in relationship from 2013 till 2022 and on multiple occasions there was a physical relationship between them. Thus, considering the allegation made which are sufficient to show that the relationship between the victim and the present applicant was consensual in nature and subsequently, it was broken. Thus, as far as the allegation that she was subjected for the sexual assault by deceitful means is not attracted. Now, further incarceration of the applicant is not required

as investigation is practically completed. In view of that, he be released on bail.

4. Learned APP and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that though there was an acquaintance and love affair between the victim and the present applicant but under the misconception, her consent was obtained that she was subjected for the sexual assault and thereafter the applicant has broken the relationship. They further invited my attention towards the statements of the witnesses which shows that the applicant has visited the office of the victim and abused her and insulted her in presence of the other office bearers. The statement of the victim and subsequent NCR report filed on record sufficiently shows that the applicant is threatening her as well as abusing her and on that count, they requested for rejection of the application.

5. I have heard learned Senior Counsel for the applicant, learned APP for the State and learned Counsel for non-applicant No.2. Perused the investigation papers from which it reveals that the applicant and the victim got acquaintance in the year 2013 and thereafter approximately for 10 years their relationship was continued. It further appears from the statement of the victim that the physical relationship between them is out of consent. The history narrated her before the Medical

Officer also shows that they are in relationship approximately from last 10 years and on multiple occasions there was a physical relationship between them. The WhatsApp chat between them also sufficiently shows that the relationship was by consent. Thus, considering the manner in which the alleged incident has taken place, it appears that out of love affair there was a physical relationship but that promise was not fulfilled as there was a discord between them. As far as the investigation part is concerned which is practically completed. As far as further incarceration is concerned which is not required. The Honourable 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 it is 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 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. In view of the above, the applicant has made out a case for grant of pre-arrest bail considering that there was a consensual relationship between the victim and the present applicant. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant - Rushikesh s/o Naresh Siramwar in connection with Crime No.383/2024 registered with Police Station Dhantoli, Nagpur for the offence punishable under Sections 69, 78, 79, 296, 351(3), 352, 115, 356(2) of the Bharatiya Nyaya Sanhita, 2023, be released on bail on executing P.R.

bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the jurisdiction of police station Dhantoli, Nagpur, till culmination of the trial.

(iv) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case either physically or by way of electronic media.

(vi) The contravention of any of the condition would lead to the cancellation of bail.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*