



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

**CRIMINAL APPLICATION (ABA) NO. 716 OF 2024**

(Mahesh s/o Lalu Prasad Vs State of Maharashtra)

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, Advocate for the applicant.  
Mr. S.V. Narale, APP for the State.  
Mr. A.H. Joshi, Advocate for Assist to Prosecution.

**CORAM:- URMILA JOSHI-PHALKE, J.**  
**DATED :- NOVEMBER 29, 2024**

Apprehending the arrest at the hands of police in connection with Crime No.274/2024 registered with police Station Nandgaon Peth, Tq. and District Amravati for the offence punishable under Sections 64, 318(2) and 351(2) of the Bharatiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of the report lodged by the victim woman, who is 36 years of age. She alleged that she is married to one Ashok Ghatge and was staying along with her children but there was some matrimonial dispute between her and her husband, therefore, she started residing separately along with her parents. She got acquaintance with the present applicant, and the present applicant proposed her, and thereafter, the love relationship was developed between them. On 10/11/2017, the present applicant took her in the hotel

and subjected her for sexual intercourse on the promise of marriage. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that there was a long standing relationship between the present applicant and the victim. It was a consensual relationship. He submitted that mere breach of promise is not sufficient to attract the provisions of Section 376 of IPC. Now the applicant has already cooperated with the investigating agency. His medical examination is already carried out. In view of that, he be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application and submitted that the present applicant who is serving in a police department not only given a false promise of marriage but subjected her for sexual assault on the promise of marriage and subsequently performed the marriage with third lady. This fact came to the notice of the victim through the friend of the present applicant and thereafter this fact was disclosed by the present applicant to the victim. Thus, there was intention since inception to deceive the victim. Considering the same, the application deserves to be rejected.

5. Learned Counsel for the victim also reiterated the said contention and submitted that the applicant

continued the sexual relationship with the victim on the promise of marriage after his marriage was fixed with the third lady. Thus, the intention of the present applicant reveals from inception. It is the case wherein the Protector became the Perpetrator of the crime. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the sides. Perused the recitals of the FIR from which it reveals that they got acquaintance with each other and they were roaming with each other. The love relationship was developed between them, and out of that, there was a physical relationship. The investigation papers shows that the victim has not only roamed with the present applicant but she has visited one lodge also wherein she stayed along with the present applicant. Her name is also revealed in the extract of the register which is collected during the investigation. The statement of the lodge Manager is yet not recorded by the investigating agency. Now, it is well settled that as far as breach of promise is concerned every breach of promise is not sufficient to attract the offence under Section 376 of the Indian Penal Code.

7. 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 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.”*

8. In view of the above proposition laid down by the Hon’ble Apex Court and considering the facts of the present case which shows that the victim who is a

grown-up lady had physical relationship with the present applicant out of consent. As far as the investigation part is concerned admittedly, the applicant has already undergone the medical examination. The statement of the victim under Section 164 of Cr.PC. is already recorded. Considering all these aspects, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Mahesh s/o Lalu Prasad in connection with Crime No.274/2024 registered with police Station Nandgaon Peth, Tq. and District Amravati for the offence punishable under Sections 64, 318(2) and 351(2) of the Bhartiya Nyay Sanhita, 2023 be released on anticipatory bail on executing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10.00 AM to 01.00PM, till filing of the charge-sheet and shall cooperate with the investigating agency.

(iv) The applicant shall not contact with the victim in any manner either physically or through electronic media.

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

9. The contravention of any of the condition would lead to the cancellation of bail.

10. The application is disposed of.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*