



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

CRIMINAL APPLICATION (ABA) NO.721 OF 2024
(Asiboddin Faiyyasjoddin Vs. 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. Z.Z. Haq, Advocate for the applicant.
Mrs. H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 14, 2024

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.310/2024 registered with Police Station Murtizapur, District Akola for the offence punishable under Sections 69 and 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023.

2. The crime is registered on the basis of report lodged by a victim girl who is a grown-up married lady alleging that her first marriage was performed with one Sayyed Matin Sayyed Nasir and during the existence of said marriage, she got acquaintance with the present applicant. Present applicant used to visit her house as well as used to call her, therefore, her husband has suspected her character. There was a divorce between them and the present applicant on the promise of marriage subjected her for the sexual assault. 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 informant which was consensual in nature. As far as the false promise is concerned whether there was an intention since inception or not is a matter of evidence. As far as custodial interrogation is concerned which is not required. He submitted that considering there was a consensual relationship and the custodial interrogation is not required, the applicant be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application on the ground that in view of Section 69 of the BNS, there was a false promise and on the false promise of marriage she was subjected for the sexual assault. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the recitals of the FIR and the various statements of the witnesses it reveals that there was previous acquaintance between the victim and the present applicant and the relationship was developed between them. It is apparent that there was a consensual relationship between them. As far as whether there was a false promise of marriage or there was a breach of promise is a matter of evidence. 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 has distinguished between rape and consensual sex which 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 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 observation, the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Asiboddin Faiyyasjoddin in connection with Crime No.310/2024 registered with Police Station Murtizapur, District Akola for the offence punishable under Sections 69 and 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023, be released on anticipatory bail on executing a P.R.Bond in the sum 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 a.m. and 1.00 p.m. till filing of the charge-sheet and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to the victim or any person acquainted with the facts of the present case, either personally or by way of electronic media.

(v) The applicant shall not enter into the vicinity of Murtizapur till the evidence of the victim is recorded.

(vi) A single attempt of tampering of the witnesses would lead to the cancellation of bail.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*