



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

CRIMINAL APPLICATION (ABA) NO.735 OF 2024

(Yogesh Anilrao Nishane 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. K.P Mahalle, Advocate for applicant.
Mr. S.V. Narale, APP for the State.
Mr. A.P. Thakare, Advocate for the complainant.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 21, 2024.

Apprehending the arrest at the hands of police in connection with Crime No.563/2024 registered with Police Station Shegaon, District Buldhana for the offence punishable under Sections 376, 376(2)(n), 504 and 506 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. As per the accusation against the present applicant by the victim/informant girl who is aged about 27 years that she got acquaintance with the present applicant and thereafter, they started communicating with each other. There was a love affair between them and out of that love affair, physical relationship was developed between them. Subsequently, the applicant denied to perform the marriage with her, and therefore, she lodged the report against the present applicant. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that considering the recitals of the FIR, it reveals that out of love affair, there was consensual relationship between the applicant and the victim. Now they have already performed the marriage and they are residing together. He submitted that considering the applicant has cooperated with the investigating agency and the circumstances under which the alleged incident has taken place, the applicant be protected by granting anticipatory bail.

4. Learned APP strongly opposed the application and submitted that the ground of consensual relationship is not available to the present applicant, there was not merely a breach of promise but there was an intentional act of the applicant not to perform the marriage and subjected the victim for sexual assault. In view of that, the application deserves to be rejected.

5. Learned Counsel for the complainant has also supported the case of the applicant and submitted that now they both have married. In view of that, victim has no objection to release the applicant on bail.

6. After hearing the learned Counsel for the applicant and learned APP for the State as well as learned Counsel for the victim, perused the recitals of the FIR from which it reveals that two grown up persons came together out of a love affair and out of consent there was a physical relationship between them. Now, it is well settled that

mere breach of promise it is not sufficient to attract the provisions of Section 376 of the Indian Penal Code. From the investigation papers also it reveals that there was a consensual relationship and as the applicant has not performed the marriage, FIR came to be lodged. Now it reveals that they both have performed the marriage. Considering the same, the custodial interrogation is not required. In view of that, the interim protection granted to the applicant deserves to be confirmed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) In the event of arrest, in connection with Crime No.563/2024 registered with Police Station Shegaon, District Buldhana for the offence punishable under Sections 376, 376(2) (n), 504 and 506 of the Indian Penal Code, the applicant - Yogesh Anilrao Nishane shall be released on ad-interim anticipatory bail, on executing PR. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(iv) The applicant shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*