



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

**CRIMINAL APPLICATION (ABA) NO. 753 OF 2024**

Zameer Khan s/o Afroz Khan Vs State of Maharashtra and another.

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

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Court's or Judge's Order

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Mr. T.U. Tathod, counsel for applicant.

Mr. N.B. Jawade, APP for non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 02/12/2024.**

1. Apprehending the arrest at the hands of police in connection with Crime No. 577/2024 registered with Police Station Badnera, District Amravati for the offence punishable under Sections 64(2)(m), 115(2), 351(2), 352 of Bhartiya Nyay Sanhita, 2023, the applicant approached this court of grant of pre-arrest bail.

2. Learned counsel for the applicant submitted that victim is aged 28 years and has lodged the report on an allegation that she got acquaintance with the present applicant, and the present applicant on various occasions by threatening, assaulting her, and subjected her for forceful sexual assault. On the basis of the said report, police have registered the crime against the present applicant. Learned counsel for the applicant submitted that there was a love affair between the victim and the present applicant, and out of that love affair, a physical relationship was developed out of consent. He also invited

my attention towards the application filed by the victim before the Sessions Court, wherein she has stated that she has lodged the report due to some misunderstanding. He submitted that after the applicant is protected by granting ad-interim protection, he has attended the concerned police station.

3. Learned APP strongly opposed the said application on the ground that considering the recitals of the FIR, at this stage, no case is made out for grant of anticipatory bail. He also placed on record a general diary entry which shows that the applicant has not attended the concerned police station and has not cooperated with the investigating agency.

4. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the investigation papers, from which it reveals that there was a consensual relationship between the victim and the present applicant, and out of that consent, there was a physical relationship, and the FIR is lodged due to the misunderstanding. This aspect whether there was a false promise or it is a breach of promise is dealt by the Hon'ble Apex Court in the case of *Dr. Dhruvaram Murlidhar Sonar vs The State Of Maharashtra, in Criminal Appeal No. 1443 Of 2018, (Arising out of S.L.P (Criminal) No.6532 of 2018) decided on 12/11/2018.*

5. Moreover, as far as the consensual sexual relationship is concerned, it is observed by the Hon'ble Apex Court, in the case of ***Dr. Dhruvaram Murlidhar Sonar*** (supra) is appropriate and is applicable in the present case. In para -20 of the said judgment which reads thus:

*“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must be 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 malafide 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 Indian Penal Code, 1860”*

6. In view of the decision of the Hon'ble Apex Court, the applicant has made out a case for grant of anticipatory bail, but considering the submissions made by

learned APP, some condition requires to be imposed on him. In view of that, I proceed to pass the following order.

- a] Criminal Application is allowed.
- b] In the event of arrest, in connection with Crime No. 577/2024 registered with Police Station Badnera, District Amravati for the offence punishable under Sections 64(2)(m), 115(2), 351(2), 352 of Bhartiya Nyay Sanhita, 2023, the applicant – ***Zameer Khan s/o Afroz Khan*** shall be released on anticipatory bail, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like.
- c] The applicant shall attend the concerned police station once in a week on Monday between 10.00 a.m. to 01.00 p.m. and the applicant shall remain present before the investigating officer on 04/12/2024 for uploading the finger print, which is the requirement as per the report of the investigating officer.
- d] The applicant shall attend the concerned police station regularly till filing of the charge-sheet.

- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, either physically or through electronic media.
- f] Steno copy of this order be furnished to the parties to act upon.

Criminal application is **disposed of**.

**[URMILA JOSHI-PHALKE, J.]**