



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

CRIMINAL APPLICATION (BA) NO. 1027 OF 2024

SHRI. DEEPAK KUMAR BIJENDRA MUKHIYA

VS

THE 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.Kalidas, counsel for applicant.

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

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 22/11/2024.

1. The applicant came to be arrested on 22/08/2024 registered with Police Station M.I.D.C. Nagpur for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by victim aged 32 years on an allegation that she is residing along with her parents and also taking education. She got acquaintance with the present applicant in the year 2023, i.e. on 17/06/2023. Thereafter, there was communication between them. The applicant was meeting with her and also disclosed to her that he has taken education in ITI College of Mechanical stream. He has also disclosed that he is unmarried and has some feelings for her. On 16/07/2023, on the promise of marriage, he took her along with him and subjected her for forceful sexual assault. It is further alleged that on the pretext of the

sickness of his father, he has obtained money from time to time of Rs. 5,00,000/-, and subsequently, he left her. On the basis of said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that the victim is a grown-up woman, and out of her consent, there was a consensual relationship between her and the present applicant. He further submitted that as far as the further incarceration is concerned, which is not required. Now the investigation is completed, and charge-sheet is filed, in view of that, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that the applicant was absconding since the date of registration of crime. He was recently arrested on 22/08/2024. If he is released on bail, he would not be available for trial, and the trial would be held up.

5. He further submitted that the consent was obtained under the false promise as well as on the false information given to the victim. Therefore, it is not a free consent, and therefore, that cannot be considered to release the present applicant on bail. He submitted that the consent was obtained under the misconception of fact, and therefore, that consent cannot be treated as free consent, and therefore, the application of the present applicant deserves to be rejected.

6. After hearing both sides. On perusal of the investigation papers, it reveals that the applicant got acquaintance with the victim and thereafter informed her that he is studying in ITI College and also informed her that he is unmarried. However, he has concealed the fact that he is a married person, and on the misconception of facts, he has subjected her for the sexual assault from time to time. The statement of witnesses shows that the applicant has not only obtained consent under misconception, but there was an intention to cheat the victim since inception. The statement of Santosh Guneshwar Sahani recorded during the investigation reveals that the applicant is a married person having a child. It further reveals that on the false pretext of sickness of his father, he obtained the money and duped the victim.

7. Moreover, there is a clear distinction between rape and consensual sex. The court has to carefully examine whether the accused 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 accused had any malafide intention and if he had clandestine motives, it is a clear case of rape.

8. In light of the above legal position, if the facts of the present case are taken into consideration, admittedly, the applicant has already informed the false information to the victim and thereafter has obtained the money from the victim. Thereafter, he got absconding. In view of the circumstances, it sufficiently shows the intention of the accused.

9. Though learned counsel for the applicant is relying upon the orders passed by this Court in Principal Bench i.e. *[Anticipatory Bail Application No. 2605/2024 (Vishal Nagnath Shinde Vs The State of Maharashtra and another, decided on 26/09/2024)]* and *[Criminal Application (BA) 834/2018 (Sagar s/o Sudhakar Pofare vs State of Maharashtra, decided on 14/09/2018)]*, it shall be distinguished in the light of the facts and circumstances of the present case.

10. Considering the considerations for the grant of bail, the gravity of the offence and punishment provided is to be seen, at the same time, whether there are chances

of fleeing away of the accused from the justice is also one of the considerations while considering the grant of bail.

11. In the present case, the facts of the record sufficiently show that the applicant was absconding after registration of the crime for 7 to 8 months, and the circumstances under which the alleged incident has taken place also show the intention of the present applicant. Considering all these above facts and circumstances, the applicant has not made out a case for grant of bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]