



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

CRIMINAL APPLICATION (BA) NO. 1070 OF 2024

Roshan s/o Janardan Ingle 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. P.C. Amesar, counsel for applicant.

Mr. K.R. Lule, APP for non-applicant/State.

Ms. Punam D. Pisurde, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/12/2024.

1. The applicant came to be arrested on 17/09/2024, in connection with crime no. 902/2024 registered with Police Station Saoner, District Nagpur for the offence punishable under (Sections 376, 506 of the Indian Penal Code) Sections 64, 351(2)/(3) of the Bhartiya Nyaya Sanhita, 2023.

2. Learned counsel for the applicant submitted that the victim is 40 years old, who lodged the report alleging that she got acquaintance with the present applicant when she had been on Tour along with other persons, and friendship was developed between them. Thereafter, the present applicant started visiting her house and also demanding the amount, and he subjected her for forceful sexual assault by administering her liquor. He has also taken her in a lodge, wherein also, he has subjected her for sexual assault. On the basis of the said report,

police have registered the crime against the present applicant.

3. She submitted that from the statement of the victim, it reveals that she has not only stated that there was acquaintance between her and the present applicant, but she went along with the present applicant in various lodges. She has not shown any displeasure as far as the forceful sexual assault is concerned, which is not noted either by the manager of the lodge or the hotel, wherein she was taken. The statement of the witnesses also shows that there was extra-marital affairs between her and the present applicant. Thus, considering the statement of the witnesses, it reveals that it was a consensual act. Now the investigation is already completed, and charge-sheet is already filed, further incarceration of the present applicant is not required.

4. Learned APP and learned counsel for the victim strongly opposed the said application and submitted that the victim was not subjected for sexual assault, but she was threatened, and money was obtained from her. She was also threatened to the extent of showing the pistol. Therefore, considering the conduct of the present applicant, the application deserved to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that out of acquaintance, there was a consensual relationship developed between the present applicant and the victim, and out of that she has

visited various lodges and hotels along with the present applicant. Though the statements of the manager were recorded, it nowhere reveals that any displeasure was seen by them of the present victim when she had been along with the present applicant in the lodge. The statement of the witnesses further shows that the present applicant used to visit her house frequently, and there was allegedly an extramarital relationship with him, the present applicant, and the victim. Thus, considering the statements of the witnesses and the statement of the lodge and hotel manager, it reveals that it was a consensual relationship between them.

6. 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 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*** 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”

7. 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] The criminal application is **allowed**.
- b] The applicant – *Roshan s/o Janardan Ingle*, shall be released on bail, in connection with crime no. 902/2024 registered with Police Station Saoner, District Nagpur for the offence punishable under (Sections 376, 506 of the Indian Penal Code) Sections 64, 351(2)/(3) of the Bhartiya Nyaya Sanhita, 2023, on executing P.R. Bond in the sum of

Rs.25,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter into the vicinity of Khaperkheda, Tah. Saoner, District Nagpur, till culmination of the trial.
- d] The applicant shall attend the proceedings before the Sessions Court without seeking any exception unless there are exceptional circumstances.
- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f] The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]