



1.699.23.odt

1

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

CRIMINAL APPLICATION (ABA) NO.699 OF 2023
(Vijay s/o Prakash Bhangare 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. P. Ranade, Advocate for the applicant.
Ms M.A. Barabde, APP for the State.
Mr. D.P. Shahare, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 17, 2024

By this application, in apprehending of the arrest, the applicant is seeking anticipatory bail in connection with Crime No.109/2023 registered at police station Jiwati, District Chandrapur for the offences punishable under Sections 376(2)(n) and 417 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by the victim who is aged about 28 years. It is her contention that she has studied up to the second year of her graduation. She got acquaintance with the present applicant in the marriage of her relative and the applicant has promised her for marriage as there was love affair between them. On the promise of marriage, she was subjected for sexual assault and subsequently, the applicant declined to marry with her.

3. Learned Counsel for the applicant submitted that it was a consensual relationship and as the relationship was broken, this false report is lodged against

the present applicant. Now, the investigation is completed and charge-sheet is filed. The custodial interrogation of the present applicant is not required. In view of that, the interim protection granted to the present applicant be confirmed.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that considering the nature of the offence, wherein on the promise of marriage the applicant has subjected the victim for sexual assault. His custodial interrogation is required and prays for rejection of the application.

5. Learned appointed Counsel for non-applicant No.2 also endorsed the same contention and requested for rejection of the application.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that the allegation against the present applicant is that the victim and the applicant developed the love relationship and out of that there was a physical relationship between them. From the recitals of the FIR, it appears that it was a consensual relationship. Now, it is well settled that mere breach of promise is not sufficient to attract the penal provisions under Section 376(2)(n) of the Indian Penal Code. The Hon'ble Apex Court in the case of *Shambhu Kharwar vs. State of Uttar Pradesh and anr. AIR 2022 SC 3901* has dealt with this aspect and it is held that mere breach of promise is not sufficient to attract the provisions under Section 376(2)(n) of the Indian Penal Code. Now, the

investigation is already completed and charge-sheet is filed. The custodial interrogation of the present applicant is not required. In view of that the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The Application is allowed.
 - (ii) In the event of arrest, the applicant – Vijay s/o Prakash Bhangare in connection with Crime No.109/2023 registered at police station Jiwati, District Chandrapur for the offences punishable under Sections 376(2)(n) and 417 of the Indian Penal Code, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- with one surety, in the like amount.
 - (iii) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.
 - (iv) The applicant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.
7. The application is disposed of.
8. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)