



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

CRIMINAL APPLICATION (ABA) NO.785 OF 2024
(Akshay Moreshwar Jumnake 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. V.D. Darne, Advocate for the applicant.
Mr. N.B. Jawade, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 26, 2024

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.381/2024 registered with Police Station Pusad City, District Yavatmal for the offence punishable under Sections 354, 354-A, 342, 376 and 506 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the victim girl aged about 19 years on an allegation that, she is residing along with her parents. She got acquaintance with the present applicant and there was friendship in between them. Prior to some days, there was dispute between her and the family of the present applicant and since then they were not communicating with each other. On 09/06/2024 at about 2.50 p.m., when she was proceeding towards the grocery shop, at the relevant time, the applicant called her inside the house and thereafter subjected her for the sexual assault as well as sexual harassment and also confined her

in the bathroom. She has also sustained injuries due to the assault by the present applicant. Thereafter, she was rescued by her cousin. On the basis of the said report, police have registered the crime against the present applicant.

3. Subsequent to the lodging of the report, her statement was recorded on 10/06/2024, wherein she has alleged that she was not only harassed on 09/06/2024 but the present applicant has also subjected her for forceful sexual assault. On the basis of the said statement, subsequently Section 376 of IPC was added. The victim was referred for the medical examination. During her medical examination, the external injuries were found on her person as well as hymen was found torn in a healed condition.

4. Learned Counsel for the applicant submitted that there was a love affair between the victim and the present applicant as the said fact was exposed to the parents, and therefore, she was assaulted by the parents and due to the pressure of the parents ,this false FIR is lodged.

5. He invited my attention towards the various WhatsApp chat between the present applicant and the victim as well as some photographs and submitted that with the false allegation the applicant is implicated in the

alleged offence. He submitted that the custodial interrogation of the present applicant is not required. In view of that, the applicant be released on anticipatory bail.

6. Learned APP strongly opposed the application on the ground that the application itself is not maintainable as on merits the first application is already rejected by this Court. He further submitted that during investigation, the statement of the victim was recorded from which it reveals that the victim was not only subjected for the sexual harassment but she was subjected for the sexual assault also. He submitted that even accepting the allegation as it is then also the offence is made out against the present applicant as there was no free consent on the part of the victim. In view of that, the application deserves to be rejected.

7. Learned Counsel for the victim has also endorsed the same contention and submitted that considering the gravity of the offence, the application deserves to be rejected.

8. I have heard learned Counsel for both the parties. Perused the recitals of the FIR and the entire investigation papers. The first and foremost contention of the learned APP is that the initial application is rejected by this Court, and therefore, the application is not

maintainable. In support of his contention, he placed reliance on the order passed by this Court in Criminal Application (BA) No.163 of 2024 whereas learned Counsel for the applicant placed reliance on the decision of the Supreme Court in the case of ***Babu Singh and ors. vs. State of U.P [(1978) 1 SCC 579]***, and the decision of the Punjab and Haryana High Court in the Case of ***Bhisham Singh vs. State Of Haryana Decided on 09/04/2024*** .

9. As far as the maintainability of the present application is concerned the Hon'ble Apex Court in the case of *Babu Singh and ors. (supra)* held that an order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. While the Courts should set store by the circumstance that bail application once rejected it cannot be said that the Court is barred from second consideration at a later stage. The Punjab and Haryana High Court has also considered this aspect and held that the second application is maintainable. There is no dispute as to the fact that the second application is maintainable only in a change in circumstances. Once application is rejected on merits, the same cannot be entertained unless there is a change in circumstances. He submitted that though it is true that personal liberty cannot be taken away, except in accordance with procedure established by the law, it is also true that a person whose application for enlargement

on bail is once rejected, the same is not precluded from filing subsequent application, but there has to be some change in circumstances. Perusal of the application nowhere shows that there was any change in the circumstances. This aspect was considered by the Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and anr, reported in (2005)2 SCC 42*** wherein it is observed that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

10. In the case of ***Prasad Shrikant Purohit vs. State of Maharashtra, [(2015)7 SCC 440]*** wherein also the Hon'ble Apex Court held that, "we must note that though an accused had a right to make successive

applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications.”

11. In the case of ***State of Tamil Nadu Vs. S.A.Raja, [(2005) 8 SCC 380]***, the Hon’ble Apex Court observed that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of *circumstances* would lead to bad precedents.

12. In the case of ***State of M.P. vs. Kajad, [(2001) 7 SCC 673]***, wherein also the Hon’ble Apex Court made the similar observations that it is true that successive bail applications are permissible under the changed circumstances. But, without the change in the circumstances the second application would be deemed to

be seeking review of the earlier judgment which is not permissible under the criminal law as has been held by this court in the case of ***Hari Singh Mann vs. Harbhajan Singh Bajwa, [(2001)1 SCC 169]***.

13. In the light of the above observations of the Hon'ble Apex Court, if the earlier order passed by this court is taken into consideration, it is passed on merits. As far as the change in circumstances the application nowhere shows there was any change in the circumstances.

14. Reverting back to the merits of the case is concerned, there is no dispute that there was friendly relationship between the present applicant and the victim. Even from the chats, it reveals that there was a love relationship also between them. The photographs which are filed on record which shows that there was family relationship also between the two families. In the light of the above facts and circumstances, if the allegations are seen it reveals that there was some dispute arose between two families and due to the discord they were not communicating with each other. As per the allegation levelled against the present applicant that, on the day of incident when victim was proceeding, she was called by the present applicant and she was subjected for the sexual assault.

15. Learned Counsel for the applicant vehemently submitted that this allegations are levelled only to implicate the accused falsely. However, if these facts are considered in the light of the medical certificate which is placed on record and collected during the investigation shows that hymen was found to be torn as well as there were external injuries found on her person i.e. linear abrasion on neck, contusion on left shoulder, blunt trauma on right shoulder and blunt trauma on lower back. As far as these injuries are concerned no explanation is by the applicant. The fact that the hymen was found torn is also sufficient to show that there was some incident took place. Even accepting that there was a love affair between the victim and the present applicant then also confinement by the applicant and causing injury to the victim shows some substance in the allegation levelled by the victim against the present applicant. Moreover, after registration of the crime, the applicant was absconding and thereafter he approached to this Court. Thus, considering all these aspects, admittedly, *prima facie* case is made out against the present applicant. As already observed that earlier bail application is rejected on merits and there is no change in circumstance, therefore, the present application is not maintainable. On merits also the *prima facie* case is made out against the present applicant. The grant of anticipatory bail is to be considered on the basis of the well settled considerations i.e. the nature of the offence, the punishment provided for the said offence and the

availability of the applicant for the investigation purpose and whether there are chances of fleeing away from the Court of justice. Considering the applicant was absconding after the registration of the crime, the involvement of the present applicant in a sexual offences and the earlier application rejected on merits, the application deserves to be rejected.

16. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*