



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

CRIMINAL APPLICATION (ABA) NO.743 OF 2023

Atish Sandip Khandare

Vs.

State of Maharashtra, Through Police Station Officer, Gadge Nagar, District Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. V. Navlani, Advocate for applicant.

Ms. M. H. Deshmukh, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/01/2024

1. By this application, the applicant is seeking anticipatory bail in the event of his arrest, in connection with Crime No.1246/2023 registered at Gadge Nagar Police Station, District Amravati for the offence 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 on an allegation that she got acquaintance with the present applicant as they both are resident of Amravati. Her marriage was performed prior to four years and she was residing along with her husband and one daughter. The applicant is residing near to her house in the same lane. As her husband was harassing her under the influence of liquor and the

present applicant was assisting her and protecting her from the harassment at the hands of her husband. She developed the friendship with the present applicant. She further alleged that the applicant has promised her for marriage by inducing her that he shall obtain divorce from her husband and he will marry with her and subjected her for sexual assault. Out of such relationship, she carried pregnancy and therefore, she insisted the present applicant to perform marriage but he denied for the same. Thus, she is deceived by the present applicant.

3. Learned Counsel Mr. Navlani for the applicant submitted that from the recitals of the FIR, it is crystal clear that there was consensual sexual relationship between the applicant and the said lady. Mere breach of the promise of marriage is not sufficient to attract the offence under Section 375 of the Indian Penal Code. In support of his contention, he placed reliance on **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Another** reported in **2021 ALL SCR (Cri.) 648** and **Pramod Suryabhan Pawar Vs. The State of Maharashtra and others** reported in **AIR 2019 SC 4010**.

4. Learned APP strongly opposed the application on the ground that victim was subjected for the sexual assault on the false promise of marriage. Considering the gravity of the offence, the custodial interrogation of the

present applicant is required and prays for rejection of the application.

5. After hearing both the sides and perusal of the investigation papers, it reveals that victim is a married woman, living separately from her husband along with her three years daughter. As per her allegation on the promise of marriage, she subjected for sexual assault. It is apparent that sexual activity between the applicant and the victim is out of consent. The Hon'ble Apex Court in various judgments held that the consent with respect to Section 375 of the Indian Penal Code involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. An inference as to consent can be drawn if only based on evidence or probabilities of the case. It denotes an active will in mind of a person to permit the doing of the act complained of.

6. As far as the contention of the informant is concerned, that the false promise of marriage is given. It is now well settled that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual

relations, there is a “misconception of fact” that vitiates the woman’s “consent”. Mere breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had an intention of not upholding his word at the time of giving it. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. At this stage, nothing is on record to show that with an intention of not upholding the promise, the act of sexual intercourse was committed by the present applicant. The physical relationship between the informant and applicant appears to be by consent. Now custodial interrogation of the present applicant is not required. The Hon’ble Apex Court in **Pramod Suryabhan Pawar** (supra) while dealing with the similar situation laid down that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” which vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. As it is already observed that, at this stage, nothing is on record to show that with intention not to uphold the said promise the sexual assault was made by the present applicant, the application of the present applicant deserves to be allowed by imposing certain conditions. In view of that, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Atish Sandip Khandare** in the event of arrest in Crime No.1246/2023 registered at Police Station Gadge Nagar, Amravati for the offence punishable under Sections 376(2)(n) and 417 of the Indian Penal Code, be released on anticipatory bail on executing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall attend the concerned Police Station twice in a week on every Monday and Wednesday between 10.00 a.m. and 1.00 p.m. for the investigation purpose, till filing of the charge-sheet.
- (iv) The applicant shall cooperate with the investigation agency.
- (v) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.
- (vi) The applicant shall furnish his cell phone number and address with address proof before the Investigating Officer.

(URMILA JOSHI-PHALKE, J.)