



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

CRIMINAL APPLICATION (ABA) NO.806 OF 2024

(Abhishek s/o Ramesh Kudmethe 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. S.B. Gandhe, Advocate for the applicant.
Mr. S.A. Ashirgade, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- NOVEMBER 29, 2024

Apprehending the arrest at the hands of police in connection with Crime No.1284/2024 registered with Police Station Awdhootwadi, Yavatmal, District Yavatmal for the offences punishable under Sections 69 and 351 (2) of the Bharatiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of the report lodged by the victim girl aged about 26 years on an allegation that she got acquaintance with the present applicant through Jeevansathi.com and they exchanged the mobile numbers to each other. Thereafter they communicated with each other and friendship resulted into love affair. They were also meeting to each other and the victim went along with him at Goa for pre-wedding shoot. It is alleged that the present applicant has subjected her for the forceful sexual assault on the promise of marriage and subsequently, not performed the marriage

and she is duped. The applicant has performed the engagement with another lady. On the basis of the said report, police have registered the crime against the present applicant. Learned Counsel for the applicant submitted that from the recitals of the FIR it reveals that it was a consensual relationship between the victim and the present applicant. Mere breach of promise is not sufficient to attract the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023. He submitted that as far as the custodial interrogation of the present applicant is concerned which is not required. In view of that, the applicant be protected by granting anticipatory bail.

3. Learned APP strongly opposed the application and submitted that the victim was duped by the present applicant by promising her again and again for the marriage and on the promise of marriage her consent was obtained and she was subjected for the sexual assault, therefore, the application deserves to be rejected.

4. I have heard learned Counsel for both the parties. Perused the investigation papers especially the statement of the victim from which it reveals that they both got acquaintance with each other through the website Jeevansathi.com. Initially, there was a friendship between them which resulted into the love affair. Victim has roamed along with him at various places and never shown her displeasure or never complained about the

sexual assault on the promise of marriage. Thus, from the statement of the victim it reveals that it was a consensual relationship between the victim and the present applicant. This aspect is dealt by the Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018)*** in para number 20 which reads as under:

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must 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 mala fide 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 IPC.”

5. Thus, considering the observation made by the Hon’ble Apex Court the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Abhishek s/o Ramesh Kudmethe in connection with Crime No.1284/2024 registered with Police Station Awdhootwadi, Yavatmal, District Yavatmal for the offences punishable under Sections 69 and 351 (2) of the Bharatiya Nyaya Sanhita, 2023, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(v) The applicant shall attend the proceedings before the Sessions Court regularly without seeking any exemption unless there are exceptional circumstances.

6. The contravention of any of the condition would lead to the cancellation of bail.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*