



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

CRIMINAL APPLICATION (BA) NO.1102 OF 2023

(Praful Ramchandra Bele 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. N.B. Bargat, Advocate for the applicant.
Mr. A.G. Mate, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 8, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 06/11/2023 in connection with Crime No.1233/2023 registered with Police Station Panchpaoli, Nagpur, District Nagpur for the offence punishable under Sections 376, 376(2)(n) and 420 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim on an allegation that when she was taking education she got acquaintance with the present applicant which developed into their love relationship. The applicant has promised her for marriage and subjected her for sexual assault. She further alleged that the applicant has obtained the Adhar Card and Pan Card of her mother and by using the same obtained the loan and duped the complainant. She further alleged that present applicant has also obtained the loan on her name also and duped her. On the basis of said

report police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the allegations regarding the sexual assault is concerned which appears to be consensual one. Out of love affair they had physical relationship. He Submitted that now investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. He further submitted that to show his bonafide he has cleared the loan by paying loan amount of Rs.49,012/-. He invited my attention towards the statement of the victim wherein she has stated that amount of Rs.61,384/- is duped against the loan in the name of her mother which is obtained by the applicant by using the Pan Card and Adhar Card of her mother by applying online. In one time settlement the said financial institution accepted the amount of Rs.49,012/- and issued the No-dues certificate to the present applicant. Considering the fact that there was a consensual relationship and now the amount is also repaid by the present applicant, his further incarceration is not required and he will abide by all the conditions imposed by this Court and prays for releasing the applicant on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that though there was a consensual relationship but the act of the applicant

is that he has promised her for marriage and subjected her for sexual assault and not only this he has obtained the loan by using the Adhar Card and Pan Card of the mother of the informant. Thus, his intention since inception revealed and in view of that, the application of the applicant for grant of bail deserves to be rejected.

5. Having heard learned Counsel for the parties and perused the investigation papers. From the statement of the victim itself is revealed that they both have the sexual relationship out of the love relationship. Whether there was intention since inception and whether there was a false promise of marriage is a matter of evidence. A false promise is not a fact within the meaning of the Court which is defined under Section 90 of the Indian Penal Code while defining the “Consent”.

6. The Honourable Apex Court in ***Naim Ahamed Vs. State (NCT of Delhi) [2023 SCC OnLine SC 89]*** by referring the various judgments held that keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members.

All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact. The Honourable Apex Court further by referring the judgment of *Deepak Gulati vs. State of Haryana [(2013) 7 SCC 675]* define the 'consent' by distinguishing 'Rape' and 'consensual sex' and observed that consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused 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 latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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 misrepresentation made to her by the 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 so. Such cases must be treated differently.

7. In the instant case, the prosecutrix who is aged about 24 years developed the love relationship with the present applicant and there was a physical relationship between them out of the said love relationship. The facts regarding the false promise of marriage was not the reason for the sexual relationship out of the love affair they come together and had a physical relationship therefore it can be ascertained that the sexual relationship between both of them was out of the love affair. Whether there was a false promise since inception is a matter of evidence. At this stage, considering the fact that the victim who is a grown up lady knows the consequences of the act and there was a love relationship and now, the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. The bonafides are also shown by the present applicant by repaying the amount of Rs.49,012/-, his prayer for grant of bail deserves to be considered. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.

(ii) The applicant - Praful Ramchandra Bele in connection with Crime No.1233/2023 registered with Police Station Panchpaoli, Nagpur, District Nagpur for the offence punishable under Sections 376, 376(2)(n) and 420 of the Indian Penal Code, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Kashmiri Galli, Chambhar Nala, Panchpaoli police station, Nagpur till the culmination of the trial.

(iv) 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.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*