



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

CRIMINAL APPLICATION (BA) NO.1219 OF 2024

Samarjitsingh Rajendra Parihar 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. Tushar U. Tathod, counsel for the applicant.

Ms. M.A. Barbde, APP for Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/12/2024.

1. The applicant came to be arrested on 27/11/2024, in connection with Crime No. 440/2024 registered with Police Station Dattapur, District Amravati for the offence punishable under Section 69 of the Bhartiya Nyay Sanhita, 2023.

2. The accusation against the present applicant is on the basis of a report lodged by the victim, aged about 27 years, alleging that there was a proposal from the accused about the marriage to her family members, and therefore, their marriage was settled. On 06/10/2024, they all were in the hotel. The rooms were booked by her parents, and when she was sitting in her room, the present applicant came there, closed the door of the room, and outraged her modesty and also subjected her for forceful sexual assault on the promise of marriage. Their engagement was also performed. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that it was a consensual act, as the marriage was fixed, and subsequently, due to some reasons, the marriage was not performed, and therefore, this false report is lodged. He submitted that, as far as further incarceration of the applicant is concerned, which is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that the intention of the applicant can be ascertained from the circumstances that, on the promise of marriage, she has subjected the victim for the forceful sexual assault and subsequently denied to perform the marriage with him. If he is released on bail, there is every likelihood of tampering of the witnesses. In view of that, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals the marriage was settled between the parties, some rituals were also performed, and subsequently the marriage was not performed. As per the allegation on the promise of marriage, she was subjected for the sexual assault. From the statement and investigation papers, it reveals that there was a consensual act to have a physical relationship, as the marriage was settled. However, the marriage was not performed subsequently.

6. Moreover, as far as the consensual sexual relationship is concerned, it is observed by the Hon'ble Apex Court, in the case of ***Dr. Dhruvaram Murlidhar Sonar vs The State Of Maharashtra, in Criminal Appeal No. 1443 Of 2018, (Arising out of S.L.P. (Criminal) No.6532 of 2018)*** decided on 12/11/2018 is appropriate and is applicable in the present case. In para-20 of the said judgment which reads thus:

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must be 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 malafide 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 Indian Penal Code, 1860”

7. In view of the decision of the Hon'ble Apex Court, the applicant has made out a case for grant of anticipatory bail, but considering the submissions made by learned APP, some condition requires to be imposed on him. In view of that, I proceed to pass the following order.

- a] The criminal application is allowed.
- b] The applicant – Samarjitsingh Rajendra Parihar, shall be released on bail in connection with Crime No. 440/2024 registered with Police Station Dattapur, District Amravati for the offence punishable under Section 69 of the Bhartiya Nyay Sanhita, 2023 on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Hingangaon, Tah. Dhamangaon Railway till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] The applicant shall attend the proceedings before the Special Court without seeking

any exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]