



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

CRIMINAL APPEAL NO.298 OF 2024
WITH
CRIMINAL APPLICATION (APPA) NO.528 OF 2024

Dhananjay @ Karan S/o Vilas Hiwarkar, Tah. Saoner, Dist. Nagpur
V/s

State of Maharashtra, Thr. P.S.O P. S. Devalapar, Dist. Nagpur and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P. S. Khubalkar, counsel for the appellant/applicant.
Shri H. R. Dhumale, APP for respondents/non-applicant Nos.1
and 2/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : May 21, 2024

1. By preferring this appeal, the appellant has challenged the order dated 30/04/2024 passed by the Special Judge, Nagpur in Criminal Anticipatory Bail Application No.1015/2024 by which the application of the present appellant for grant of anticipatory bail is rejected.

2. The appellant/applicant is apprehending arrest at the hands of police in connection with Crime No.0111/2024 registered with Devalapar Police Station, District Nagpur for the offence punishable under Sections 376(2)(N), 506 of IPC read with Section 3(1)(w), (I), (ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989.

3. The accusation against the present appellant/applicant is on the basis of report lodged by the victim who is 27 years old and alleges that she belongs to Scheduled Tribe. There was an love affair between her and the present appellant/applicant. The appellant/applicant promised her for marriage and their marriage was also settled. Engagement ceremony was also performed. It is alleged that on 13/02/2024 at about 10 am the appellant came to her house and on the pretext of marriage subjected her for sexual assault. Thereafter he left the place. By telephonic communication the appellant informed the victim that he will not perform marriage with her and therefore the informant/victim approached to the Police Station and lodged the report.

4. The learned counsel for the appellant/applicant submitted that as far as sexual relationship between the appellant and the victim is concerned, it is admittedly by consent. Admittedly there was an love affair between the victim and the present appellant/applicant. At the most it can be termed as breach of promise but it is not an intentional act of the present appellant to subject the informant for sexual assault. He submitted that considering that it was an consensual relations between the victim and the appellant, custodial interrogation is not at all required. In view of that prayer for protection by granting ad interim anticipatory bail is made.

5. On the other hand, the learned Additional Public Prosecutor opposed the prayer on the ground that there is breach of promise and therefore crime is registered against the present appellant. His custodial interrogation is required and therefore prayer for anticipatory bail deserves to be rejected.

6. Heard the learned counsel for the appellant/applicant and the learned Additional Public Prosecutor for the State and perused the recitals of the First Information Report from which it reveals that since last about two years the victim and the appellant/applicant were in relationship. Their marriage was also settled. Engagement was also performed. From the First Information Report it also reveals that physical relationship was with the consent of the victim. Whether there was breach of promise or not is a matter of merit. At this stage, custodial interrogation of the appellant is not required. Considering the fact that it is well settled that breach of promise is not sufficient to attract the provisions of Section 376 of IPC, at this stage, the appellant/applicant can be protected by granting ad interim anticipatory bail.

7. In view of above, I proceed to pass the following order :

i) Issue notice to the respondents/non-applicants, returnable after Summer Vacation-2024.

ii) Shri H. R. Dhumale, learned Additional Public Prosecutor waives service of notice on behalf of respondents/non-applicant Nos.1 and 2/State.

iii) In the event of arrest of the appellant/applicant Dhananjay @ Karan S/o Vilas Hiwarkar in connection with Crime No.0111/2024 registered with Devalapar Police Station, District Nagpur for the offence punishable under Sections 376(2)(N), 506 of IPC read with Section 3(1)(w), (i), (ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, he shall be released on ad-interim anticipatory bail on executing P. R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

iv) The applicant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

vii) Notice on respondent No.3-Victim be served through concerned Police Station Officer, P. S. Devalapr, Dist. Nagpur.

