



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

CRIMINAL APPLICATION (ABA) NO.619/2024

Sheikh Mohsin Ahmad Vs. The State of Maharashtra

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

Court's or Judge's orders

Shri Lubesh Meshram, Advocate with Shri Saurabh Singha, Advocate for applicant
Ms T.H. Udeshi, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/09/2024

Apprehending the arrest at the hands of police, in connection with Crime No.341/2024 registered with Mankapur, District Nagpur, for the offence punishable under Sections 123, 351(2), 64(2) (1) and 64(2)(m) of the Bhartiya Nagrik Surakshya Sanhita, 2023, the applicant approached to this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of report lodged by the victim aged about 21 years, alleging that the applicant asked her to join in the business for medicine export, where she has to talk to the client and deal with product of the company and in turn the applicant promised to pay Rs.20,000/- to Rs.30,000/- per month. She by doing job, left house of parents and was working with the present applicant. She has also purchased one mobile phone from the applicant. It is alleged by her that though she has paid some money, but the present applicant was asking her to pay the money and told her that he would deduct the amount

from her salary. Thereafter, she started residing separately. On 25/12/2023, the applicant brought food for her. After eating, she fainted and when she regained consciousness, she found herself in nude condition. The applicant was also lying on her person and she has sustained the injuries. Thereafter, the applicant has also obtained her obscene photographs and also threatened her that if she lodges the report, he will make it fire. On the basis of the said report, the police have registered the crime against the present applicant. It is further alleged that the present applicant has obtained gold ornaments of her mother as well as the cash amount and key of the vehicle. On the basis of the said report, police registered the crime.

3. Learned Counsel for the applicant submitted that on the basis of the false allegation, this crime is registered against the present applicant. He produced on record the Whatsapp and Instagram chats between the present applicant and victim and submitted that from the chats, it reveals that there was love affair between the victim and present applicant. They have also published notice of their intended marriage in the marriage register's office. The present informant was involved in some tango chat and sent some obscene messages to the applicant. Thus, considering the said, it reveals that she is involved in the illegal activities and, therefore, there was some dispute between the present applicant and victim and due to which, this First Information Report came to be lodged. He

submitted that considering the various communications between the victim and present applicant, it reveals that it was a consensual act between them and, thus, the applicant has not committed any offence. He submitted that though alleged incident has occurred in the month of December, 2023, she has lodged report after 4 months. Thus, this aspect also needs consideration. As far as the custodial interrogation is concerned, the applicant is ready to co-operate with the investigating agency. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in case of *Ansaar Mohammad vs. The State of Rajasthan and anr.* reported in *2022 ALL MR (Cri) 3469 (S.C.)* and *Beerbal Prasad Rajoriya Vs. State of Madhya Pradesh* reported in *2022 ALL SCR (Cri) 1760*, wherein the Hon'ble Apex Court has considered the nature of the relationship, delay in First Information Report and released the applicant therein on anticipatory bail by imposing certain conditions.

4. Learned APP strongly opposed the said application and submitted that the applicant has subjected the victim for sexual assault. She was engaged to join the business of the applicant for medicine export. She was asked to talk to the client and, therefore, the investigation as to the nature of the business is also required. Thereafter, the applicant has obtained her obscene videos and photographs, which are to be recovered and, therefore, custodial interrogation of the applicant is required. She

submitted that the circumstances, under which, the victim was subjected for the sexual assault, is also requires to be looked into and in view of that this is not a case wherein the applicant can be protected by granting anticipatory bail.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers as well as documents filed on record by the learned Counsel for the applicant, which shows that there was well acquaintance with the victim and the present applicant. They have also intended to perform the marriage and published notice of their intended marriage in the office of the registrar of marriage. Thus, it reveals that the relationship between both of them was consensual in nature. As far as the allegations made in the First Information Report, when the incident in question, which had occurred prior to 4 months before the First Information Report was lodged. The Hon'ble Apex Court in both the decisions in ***Beerbal Prasad Rajoriya (supra)*** and ***Ansaar Mohammad (supra)***, wherein these two aspects are considered and it is held that the complainant admitted that she was in relationship with accused for period of 4 years. When relationship was started, she was 21 years of age. The complainant has been staying along with accused and now if relationship is not working, same cannot be ground for lodging the First Information Report for offence punishable under Section 376 (2) (m) of the Indian Penal Code. Whereas in the case of ***Beerbal Prasad***

Rajoriya (supra), wherein it is held that the allegations made in the FIR that incident in question had occurred five months before FIR was lodged, considering attending circumstances, applicant released on anticipatory bail.

6. The similar facts are appearing the present case, and therefore the observation of the Hon'ble Apex Court in case of **Dr. Dhruvaram Murlidhar Sonar v. The State of Maharashtra in Criminal Appeal No.1443 of 2018 arising out of S.L.P. (Criminal) No.6532 of 2018**, in paragraph 20, if appreciated, it 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 or 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 it 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 Penal Code, 1860.”

7. In view of the observation and in view of the decisions, which relied upon by the present applicant, the applicant has made out a case for grant of anticipatory bail. In view of that the application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, in connection with Crime No.341/2024 registered with Mankapur, District Nagpur, for the offence punishable under Sections 123, 351(2), 64(2)(1) and 64(2)(m) of the Bhartiya Nagrik Surakshya Sanhita, 2023, the applicant- **Sheikh s/o Mohsin Ahmad**, be released on ad-interim 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. to 1.00 p.m. and shall cooperate with the investigating agency.
- (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.

(v) The applicant shall furnish his cell phone number and address along with the names of his two relatives and their address along with address proof.

(vi) The contravention of any of the condition would lead to cancellation of the bail.

(vii) The applicant shall produce his cell phone as well as the obscene photographs, which are obtained as per the allegation and the mobile of the informant before the investigating officer and this period will be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

8. The application is disposed of.

JUDGE

R.S. Sahare