



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

CRIMINAL APPLICATION (ABA) NO. 681 OF 2024

Sandesh s/o Shivprasad Lilhare Vs State of Maharashtra and another.

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

Court's or Judge's Order

Mr. M.V. Bhamarde, counsel for the applicant.

Mr. A.R.Chutke, APP for non-applicant/State.

Ms. P.D. Pisurde, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 11/10/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No. 249/2024 registered with Police Station Gangazari (Gondia) for the offence punishable under Sections 376(2) (n) read with Section 34 of the Indian Penal Code, 1860; and Section 4 of the Dowry Prohibition Act and Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

2. The crime is registered on the basis of a report lodged by the victim, aged about 25 years, on an allegation that there was a marriage proposal from the parents of the present applicant and their marriage was settled, and thereafter, on 12/04/2024, the present applicant took her for roaming, and thereafter, they went in a lodge, wherein she was subjected for sexual assault. It is further alleged that she was also taken at the house of relatives, and there she was also subjected for sexual assault against her consent. In the FIR, it is further alleged that the present applicant thereafter started demanding the articles before performing the

marriage, and illegally he was demanding for the dowry. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that, as far as the proposal of marriage and the settlement of the marriage is concerned, there is no dispute, but the allegation regarding the forceful sexual assault is a false one. He submitted that the victim is 25 years old, and by her consent, the physical relationship was developed, and mere promise of marriage or the breach of promise is not sufficient to attract the provision of Section 376. He submitted that whatever happened is out of consent, and therefore, no offence is made out against the applicant. In view of that, he be protected by granting anticipatory bail.

4. The learned APP and learned counsel for the victim strongly opposed the said application and submitted that, considering the allegation that the applicant has not only subjected her for sexual assault but also demanded the dowry from her. Therefore, the application deserves to be rejected, as gravity of the offence is to be looked into. In view of that, the application deserves to be rejected.

5. After hearing both the sides and on perusal of the investigation papers, it reveals that, as per the allegation, the victim was taken to one lodge and subjected her for sexual assault. However, the investigation agency has not recorded the statement either of the Lodge Owner nor the Lodge

Manager to substantiate the allegation. The another incident, as per the victim, took place at the house of relatives of the present applicant. The statement of the said relatives is also not recorded. The said act was against her consent or not, there is no material to show that, as none of the witnesses shows that there was a displeasure by the victim as to the relationship developed by the applicant with her. Thus, the statements of the material witnesses are already recorded, and the medical examination of the present applicant is already carried out, and part of the medical examination of the present applicant can be taken care of by directing him to appear before the investigating officer to undergo the medical examination. In view of that, the application deserves to be allowed.

6. 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* wherein it is observed as thus:

“that there is a clear distinction between rape and consensual sex. The court, in such cases, must be 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 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. Moreover, as the marriage was settled between the victim and the present applicant, the victim is aged about 25 years of age. It is apparent that there was a consensual relationship between both of them. However, whether that consent was by misconception or by force is a matter of evidence. At this stage, 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;

- a] The criminal application is allowed.
- b] In the event of arrest, the applicant – Sandesh Shivprasad Lilhare, shall be released on anticipatory bail, in connection with Crime No. 249/2024 registered with Police Station Gangazari (Gondia) for the offence punishable under Sections 376(2) (n) read with Section 34

of the Indian Penal Code, 1860; and Section 4 of the Dowry Prohibition Act and Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant made himself before the investigating officer, and the investigating officer shall forward him for the medical examination, which is required.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- e] The applicant shall not enter into the vicinity of village Mupardibandh, Tahsil and District Gondia till culmination of the trial.
- f] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- g] The fees of the appointed counsel be quantified as per Rule.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]