



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

CRIMINAL APPLICATION (ABA) No. 33 OF 2025

Ankit Ashok Khobragade 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. S.V. Sirpurkar, counsel for applicant.

Mr.M.K. Pathan, APP for non-applicant/State.

Ms. Neerja G. Chaubey, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/02/2025.

1. Apprehending the arrest at the hands of police in connection with Crime No. 680/2024 registered with Police Station Warora, for the offence punishable under Sections 376, 376(2)(n) of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel for the applicant, who submitted that crime is registered on the basis of a report lodged by the victim girl, on an allegation that the applicant has promised her marriage and subjected her for sexual assault, and thereby committed an offence.

3. He submitted that from the statement of the victim, it reveals that there was a love affair between them, and out of love affair, the physical relationship was developed. The victim is on the verge of attaining the age of majority. The applicant is serving in an army and is now posted at Siachen. He submitted that considering the nature of the allegations, it

reveals that out of a love affair, the physical relationship was developed. As far as the custodial interrogation of the present applicant is concerned, which is not required.

4. Learned APP and learned counsel for the victim strongly opposed the said application on the ground that the consent of the victim is not relevant, as she is below 18 years of age. The recitals of the FIR clearly show that on the promise of marriage, the applicant is subjected her for the forceful sexual assault. In view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the parties and on perusal of the recitals of the First Information Report, it reveals that the victim is on the verge of attaining the age of majority. A love affair developed between them, and as a result, there was a physical relationship.

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, hence I proceed to pass the following order.

- a] The criminal application is **allowed**.
- b] In the event of arrest, the applicant – Ankit Ashok Khobragade, shall be released on anticipatory bail in connection with Crime No. 680/2024 registered with Police Station Warora, for the offence punishable under Sections 376, 376(2)(n) of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children

from Sexual Offences Act, 2012, on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- c] The applicant shall attend the concerned police station as and when required for the investigation purpose.
 - d] It is made clear that whenever the presence of the applicant is necessary, he shall be served with seven days prior notice.
 - e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
 - f] The fees of the appointed counsel be quantified as per Rule.
8. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]