



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

CRIMINAL APPLICATION (ABA) NO. 50 OF 2025

Kunal s/o Rameshwar Chute 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. R.R. Prajapati, counsel for applicant.

Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/03/2025.

1. Apprehending the arrest at the hands of police in connection with Crime No. 13/2025 registered with Police Station Mankapur, Nagpur for the offence punishable under Sections 69 r/w 115 (2) of The Bharatiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. Heard learned counsel for the applicant, who submitted that out of a love affair, the physical relationship was developed between the victim and the applicant, and subsequently this FIR came to be lodged against the present applicant. It is a consensual relationship between both of them. As far as the custodial interrogation of the present applicant is concerned, which is not required. In view of that, he be released on bail.

3. The learned APP strongly opposed the said application on the ground that the custodial interrogation

of the present applicant is required for the purpose of conducting his medical examination.

4. After hearing both sides and on perusal of the investigation papers, it reveals that it is a consensual physical relationship between the two grown-up persons. As far as the custodial interrogation is concerned, which is required only for the conducting the medical examination of the present applicant, which can be taken care of by directing him to make himself available for the medical examination before the investigating agency.

5. 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”

6. 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 – Kunal s/o Rameshwar Chute, shall be released on anticipatory bail in connection with Crime No. 13/2025 registered with Police Station Mankapur, Nagpur for the offence punishable under Sections 69 r/w 115 (2) of The Bharatiya Nyaya Sanhita, 2023, 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 once in a week on Monday

10.00 a.m. to 01.00 p.m. and shall make himself available for the medical examination

- 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 not enter into the vicinity of the Koradi District Nagpur till culmination of the trial.
- f] The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

7. The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]