



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

CRIMINAL APPLICATION (BA) NO.196 OF 2025

Taleb Shaikh Chand Shaikh

Vs.

State of Maharashtra, through Ganeshpeth Police Station, Nagpur

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

Court's or Judge's orders

Mr. S. H. Mansoori, Counsel for the applicant.
Ms. T. H. Udeshi, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/04/2025

1. The applicant came to be arrested on 27.09.2024 in connection with Crime No.354/2024 registered with Police Station Ganeshpeth, Nagpur for the offence punishable under Sections 376, 419 and 506 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the victim aged about 28 years on an allegation that she got acquaintance with the present applicant and the present applicant has promised her for marriage and on the promise of marriage on various occasion, he subjected her for the forceful sexual assault and subsequently assigned the reason that as he belongs to the Muslim Community, he is unable to perform the marriage. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant, who submitted that out of acquaintance, there was a physical relationship between the victim and the applicant. As per the statement of the victim, she was taken in hotels and lodges by the present applicant, however she never shown her displeasure or made a complaint as to the forceful sexual assault. As far as the further incarceration is concerned, which is not required. The investigation is completed and charge-sheet is filed. In view of that, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that present applicant has introduced himself as Rahul Shinde and subsequently it reveals that he belongs to the Muslim Community and his name is Taleb Shaikh Chand. Thus, since inception, there was an intention to cheat the victim. She further submitted that considering this fact itself, the application of the present applicant deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that the victim has visited along with the present applicant in various lodges. The extract of the lodge is also collected during the investigation. Admittedly, she has not made a grievance prior to the filing of the report regarding the sexual assault. At this stage, there is reason to believe the statement of the learned

Counsel for the applicant that it was a consensual act. Moreover, now the investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required. In the light of the observation of the Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018)*** in para number 20 which 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 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 mala fide 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 IPC.”

6. The applicant has made out a case for grant of bail, however, considering the circumstances under which the victim was subjected for the sexual assault, some conditions requires to be imposed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Taleb Shaikh Chand Shaikh** shall be released on bail in connection with Crime No.354/2024 registered with Police Station Ganeshpeth, Nagpur for the offence punishable under Sections 376, 419 and 506 of the Indian Penal Code, on executing PR Bond of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter within the jurisdiction of Wathoda Police Station, till the culmination of the trial.

(iv) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

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

(vi) The applicant shall not leave the jurisdiction of Nagpur City without prior

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permission of the District Court Nagpur.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate