



(1)

49.aba.111.2025

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

CRIMINAL APPLICATION (ABA) NO.111 OF 2025

Nikhil s/o Dipakrao Salame
Vs.

State of Maharashtra, through Police Station Officer, Police Station
Benoda, District Amravati and another

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

Court's or Judge's orders

Mr. S. D. Yerawar, Counsel for the applicant.
Mr. N. B. Jawade, APP for the non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/03/2025

1. Apprehending the arrest at the hands of police in connection with Crime No.10/2025 registered with Police Station, Benoda, District Amravati for the offences punishable under Sections 64(2)(d) and 69 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 the crime is registered on the basis of report lodged by the victim, who is aged about 25 years, on an allegation that there was a love affair between her and applicant and out of a love affair, the physical relationship was developed between them. It is further alleged that on the promise of marriage, she was subjected for the

sexual assault, in fact, there was no such promise of marriage. Out of a consensual relationship, the physical relationship was developed. As far as the immediate custodial interrogation is concerned, which is not required. In view of that, he be protected by granting anticipatory bail.

3. Learned APP strongly opposed the said application and submitted that under the misconception of the fact that he would perform the marriage with her, the consent was obtained and therefore, the application deserves to be rejected.

4. On hearing both sides and on perusal of the investigation papers, it reveals that the victim and the present applicant got acquaintance with each other, there was a love relationship developed between them and out of that the physical relationship was also developed.

5. In view of the decision 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. In view of the observation of the Hon'ble Apex Court, the present applicant has made out a case for grant of anticipatory bail. In view of that, I proceed to pass following order:

ORDER

- (i) The application is allowed.

(ii) In the event of arrest, in connection with Crime No.10/2025 registered with Police Station, Benoda, District Amravati for the offences punishable under Sections 64(2)(d) and 69 of the Bharatiya Nyaya Sanhita, 2023, the applicant **Nikhil s/o Dipakrao Salame** shall be released on anticipatory bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case either physically or through electronic media.

(v) The applicant shall not enter into the vicinity of village Pandharghati, Taluka Warud, District Amravati, till culmination of the trial.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)