

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

CRIMINAL APPLICATION (ABA) NO. 175 OF 2025

Vitthal s/o Arjun Dandge 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

Ms. Yugandhara. A. Namde, counsel for applicant.

Mr. N.B. Jawade, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/03/2025.

1. Apprehending the arrest at the hands of police in connection with Crime No. 68/2025 registered with Police Station Buldhana City, Buldhana for the offence punishable under Sections 69, 352, 351(2), 351(3) of the Bhartiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. Heard learned counsel, who appeared through video conferencing for the applicant submitted that the applicant is serving in the Army. The victim and applicant were friends, and the said friendship developed into the relationship. As per the allegation, the applicant has promised her for marriage and subjected her for the forceful sexual assault. On the basis of the said report, police have registered the crime. She submitted that it was a consensual physical relationship, as the victim had already reached the age of majority, and at her own initiative, she had developed a physical relationship with the present applicant. As far as the custodial interrogation

is concerned, which is not required. In view of that, he be protected by granting anticipatory bail.

3. The learned APP strongly opposed the application and submitted that applicant, under misconception subjected the victim for forceful sexual assault, and therefore his custodial interrogation is required.

4. On perusal of the submissions made by the learned counsel for both sides and on perusal of the investigation papers, it reveals that there was a WhatsApp communication between the present applicant and the victim, which shows that they were in a love relationship, and out of the love relationship, a physical relationship was developed between them. Thus, it appears to be a consensual relationship between the present applicant and the victim. Whether there is a breach of promise or misconception of facts is a matter of evidence, at this stage, immediate custodial interrogation of the present applicant is not required.

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 – Vitthal s/o Arjun Dandge, shall be released on anticipatory bail in connection with Crime No. 68/2025 registered with Police Station

Buldhana City, Buldhana for the offence punishable under Sections 69, 352, 351(2), 351(3) of the Bhartiya 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 on 5th and 6th of April, 2025 and shall cooperate with the investigating agency.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

7. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]