



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

CRIMINAL APPLICATION (ABA) NO. 230 OF 2025

Vaibhav Namdev Khore 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. P.V. Navlani, counsel for applicant.

Mr. M.J.Khan, APP for non-applicant/State.

Ms Varsha Anup Warade, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/08/2025.

1. Apprehending the arrest at the hands of police in connection with Crime No.140/2025 registered with Police Station Frezerpura, Tahsil and District Amravati for the offences punishable under Sections 69, 351(2) of the Bhartiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of a report lodged by the victim girl alleging that she got acquaintance of the present applicant and a love affair was developed between them. Out of love affair, the present applicant promised her marriage and subjected her for forceful sexual assault, and he has also obtained her obscene videos and photographs. On the basis of the said report, police have registered the crime against the present applicant.

3. The learned counsel for the applicant submitted that out of love affair, the consensual physical relationship was developed between them. In view of that, custodial interrogation of the present applicant is not required.

4. Learned APP and learned counsel for the victim strongly opposed for the same and submitted that during the investigation, the statement of the victim was recorded, and it was revealed from her statement that, though there was a love affair, her obscene videos and photographs were obtained by the present applicant.

Learned counsel for the victim also submitted that the victim has already complained to Commissioner of Police that her FIR is not recorded as per narration, and the Commissioner of Police is inquiring about the same.

5. After hearing both sides and on perusal of the recitals of the FIR and the investigation papers, it reveals that out of love affair, the consensual relationship was developed between them, and thereafter, as the relationship was broken, the FIR came to be lodged. As far as the other allegations are concerned, the investigation is going on.

6. Moreover, as observed by 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.”

7. In view of the observations of the Hon’ble Apex court and considering the fact that out of love relationship, the physical relationship was developed. Moreover, the custodial interrogation is not required. The mobile phone is already produced before investigating officer, in view of that, the interim

protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass the following order:

- a] Criminal application is **allowed**.
- b] The interim protection granted to the applicant by order dated 07/04/2025 is hereby confirmed on the condition that he shall attend the concerned police station once in a week on Monday between 10.00 a.m. to 01.00 p.m and shall cooperate with the investigating agency.
- c] The applicant shall not induce, threat or promise any witnesses including the victim who are acquainted with the facts of the case and single attempt of tampering would lead to the cancellation of bail.
- d] The applicant shall attend the proceeding before the special Court without seeking any exemption unless there are exceptional circumstances.
- e] The applicant shall not enter into the jurisdiction of Frezerpura Police Station till culmination of the trial.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]