



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

CRIMINAL APPLICATION (BA) NO. 439 OF 2025

Abdul Karim Mohammad Mukim Malik Alias Raju 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.M.Daga, counsel for applicant.

Mr. Anant Ghongre, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/05/2025.

1. The applicant came to be arrested on 05/02/2025 in connection with Crime No. 96/2025 registered with Police Station Yashodhara Nagar, Nagpur for the offence punishable under Sections 64(2)(m), 69, 308, 351(2), 352 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2. The crime is registered on the basis of a report lodged by the victim, aged about 35 years, on an allegation that she got acquaintance with the present applicant, and their acquaintance turned into their friendship. The present applicant subsequently asked for sexual favours and subjected her for forceful sexual assault. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard Mr. R.M. Daga, learned counsel for the applicant, who submitted that the history narrated by the victim before the medical officer shows that it was a consensual act. Now, the investigation is already completed,

further incarceration of the present applicant is not required. In view of that, the application deserves to be rejected.

4. Learned APP strongly opposed the said application and submitted that, considering the statement of the victim woman who was forcefully subjected for the sexual assault, further incarceration of the applicant is required, as there is apprehension of tampering of the witnesses, in view of that, the application deserves to be rejected.

5. On hearing both sides and on perusal of the statement of the victim, and history narrated by him, it appears to be a consensual act between the victim and the present applicant. Recently this aspect is considered by the Hon'ble Apex Court in the case of *Ravish Singh Rana vs State of Uttarakhand [Criminal Appeal No. 2438 of 2025 (@ Special Leave to Appeal (Crl.) No. 2776 of 2025) decided on 28/04/2025*, wherein, by referring to the earlier judgment, it is held that the relationship between the appellant and the second respondent was of a consensual nature. The parties were in a relationship for a period of one and a half years, and subsequently the appellant has expressed disinclination to marry. It is further observed by the Hon'ble Apex Court that in a long drawn live-in relationship, occasions may arise where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that expression of desire or wish by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships

might not have been common. But now more and more women are financially independent and have the capacity to take conscious decisions of charting their life on their own terms, and it is observed that this relationship was entered itself is not sufficient to constitute the offence of rape.

6. Moreover, this aspect is also considered 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) decided on 22/11/2018*** 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 above observation of the Hon’ble Apex Court, the applicant has made out a case for grant of bail, and therefore, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- a] The criminal application is **allowed**.
- b] The applicant – Abdul Karim Mohammad Mukim Malik alias Raju, shall be released on bail in connection with Crime No. 96/2025 registered at Police Station Yashodhara Nagar, Nagpur for the offence punishable under Sections 64(2)(m), 69, 308, 351(2), 352 of the Bharatiya Nyaya Sanhita, 2023, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter within the jurisdiction of Kalmna Police Station, till culmination of the trial.
- d] The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

f] The applicant shall not leave the jurisdiction of Nagpur City without prior permission of the District Court, Nagpur.

Criminal application is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]