



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.282 OF 2025

(Manoj Gajanan Ghatolkar Vs. The State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.H. Mishra, Advocate for the applicant.
Mr. G. Umale, APP for the State.
Mr. H.V. Dhage, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 11, 2025.

Apprehending the arrest at the hands of police in connection with Crime No.147/2025 registered with Police Station Dabki Road, Akola, District Akola for the offence punishable under Sections 64(2)(m), 351(2) and 351(3) of the Bharatiya Nyaya Sanhita, 2023, the applicant approached to this Court for grant of anticipatory bail.

2. The allegation against the present applicant is on the basis of report lodged by the victim aged about 29 years on an allegation that she got acquaintance with the present applicant and on the promise of marriage, the present applicant has subjected her for the forceful sexual assault by taking her in the hotel and lodge. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that from the recitals of the FIR it reveals that it was a consensual act of the physical relationship. As far as the custodial interrogation of the present applicant is concerned which is not required. The applicant has already cooperated with the investigating agency. In view of that, he be released on bail.

4. Learned APP and learned Counsel for non-applicant No.2 strongly opposed for the application on the ground that under the misconception of fact, the consent was obtained, and therefore, the custodial interrogation of the applicant is required. Hence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties and on perusal of the recitals of the FIR and the WhatsApp chat which is a part of the application shows that there was acquaintance between the victim and the present applicant. Out of that acquaintance there was a physical relationship developed between them. The consent appears to be there. At this stage, considering the WhatsApp chat and the communication between the present applicant and the victim it appears that physical activity was by consent. 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.”

6. In view of the above, the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant – Manoj Gajanan Ghatolkar in connection with

Crime No.147/2025 registered with Police Station Dabki Road, Akola, District Akola for the offence punishable under Sections 64(2) (m), 351(2) and 351(3) of the Bharatiya Nyaya Sanhita, 2023, be released on ad-interim anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10.00 AM and 1.00 PM and shall cooperate with the investigating agency.

(iv) The applicant shall not enter into the vicinity of Gayatri Nagar, Mothi Umari, Akola, till culmination of the trial.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case including the victim, either personally or by way of electronic media.

7. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)