



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

CRIMINAL APPLICATION (ABA) NO.331 OF 2025

(Syed Kasam Syed Wajir Vs. 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. S.S. Sheikh, Advocate for the applicant.
Mr. V.A. Thakare, APP for the State.
Mr. S.S. Ali, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 9, 2025.

Apprehending the arrest at the hands of police in connection with Crime No.313/2025 registered with Police Station Yavatmal City, District Yavatmal for the offences punishable under Sections 64(2)(m), 351(2), 351(3) of the Bharatiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of anticipatory bail.

2. The crime is registered on the basis of report lodged by the victim woman who is aged about 32 years on an allegation that initially she was married with one Saiyed Rizwan Saiyed Harun and there was a dissolution of marriage between them and thereafter, as per the allegation, she came into contact with the present applicant who subjected her for the forceful sexual assault by taking her to the various places. 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 statement of the informant itself reveals that it was a consensual act. As far as the custodial interrogation of the present applicant is concerned, which is not required. In view of that, he be protected by granting anticipatory bail.

4. Learned APP strongly opposed the application on the ground that considering the allegation that she was threatened and thereafter she was subjected for the forceful sexual assault, the prayer for grant of anticipatory bail deserves to be rejected considering the gravity of the offence.

5. I have heard learned Counsel for both the sides. Perused the investigation papers it reveals that there was a consensual relationship between the victim and the present applicant and the same was broken, and therefore, FIR came to be lodged.

6. In view of the observation of the Honourable 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 above, the case for grant of anticipatory bail considering that there was a consensual relationship knowing by the victim with the present applicant, the application of the applicant deserves to be

allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) In the event of the arrest, the applicant – Syed Kasam Syed Wajir in connection with Crime No.313/2025 registered with Police Station Yavatmal City, District Yavatmal for the offences punishable under Sections 64(2) (m), 351(2), 351(3) of the Bharatiya Nyaya Sanhita, 2023, be released on anticipatory bail, on executing PR. 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, till filing of the charge-sheet and shall cooperate with the investigating agency.
- (iv) The applicant shall not enter into the vicinity of Pandharkawada Road, Yavatmal, District Yavatmal 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 either personally or by way of electronic media.

8. The contravention of any of the condition would lead to the cancellation of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*