



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

CRIMINAL APPLICATION (ABA) NO.448 OF 2025

Shankul s/o Rajkumar Gupta

Vs.

State of Maharashtra through Police Station Officer, Police Station
Nandgaon Peth, Amravati and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. V. Navlani, Counsel for the applicant.

Ms. Sneha Dhote, APP for the non-applicant No.1/State.

Mr. S. R. Jaiswal, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/08/2025

1. Apprehending the arrest at the hands of Police in connection with Crime No.156/2025 registered with Police Station Nandgaon Peth, Amravati for the offence punishable under Sections 376(2)(n), 294 and 506 of the India Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of the report lodged by the victim aged about 27 years on an allegation that she got acquainted with the present applicant and they were in a relationship. The present applicant has subjected her for forceful sexual assault and also obtained the obscene photographs and threatened her that he would make

it viral. On the basis of the said report, Police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant, who submitted that, from the recitals of the FIR itself it reveals that they were in a relationship since last 5 years and as the relationship was broken therefore this false FIR is lodged with the baseless allegations. As far as the custodial interrogation is concerned, which is not required. In view of that the interim protection granted to the applicant deserves to be confirmed.

4. Learned APP and learned appointed Counsel for the non-applicant No.2 – victim, strongly opposed the application on the ground that the applicant has not only subjected her for the forceful sexual assault but also obtained her photographs. His mobile is to be seized and therefore, his custodial interrogation is required.

5. On hearing both the sides and on perusal of the recitals of the FIR it reveals that, the victim and the applicant both were in a relationship since last 5 years, there were money transactions between them also. From the recitals of the FIR, it reveals that there was a consensual relationship but it is also apparent that as the relationship was broken the FIR came to be lodged. As far as the obscene photographs are concerned, the applicant was

interrogated and he disclosed that he do not have any such photographs. He has also made himself available for the medical examination.

6. 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)** 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 observations of the Hon’ble Apex Court, the applicant has made out a case for anticipatory bail. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is allowed.
- (ii) The interim protection granted to the present applicant by order dated 25.06.2025 is hereby confirmed on the condition that he shall attend the concerned Police Station once in a week i.e. on every Sunday between 10.00 a.m. and 01.00 p.m., till filing of the charge-sheet and shall cooperate with the investigating agency.
- (iii) The applicant shall produce his mobile phone for the purpose of the investigation.
- (iv) 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.
- (v) The applicant shall not enter into the jurisdiction of Pachpaoli Police Station, Nagpur till further orders.

8. The fees of the appointed Counsel be quantified as per rules.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)