



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

CRIMINAL APPLICATION (ABA) NO.442 OF 2025

Mohammad Zishan Mohammad Faruque Kothurkara
Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Ram Nagar, Gondia, District Gondia 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. A. S. Manohar, Counsel for the applicant.
Ms. M. A. Barabade, APP for non-applicant No.1/State.
Mr. V. H. Pandey Counsel for the intervenor.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/07/2025

1. Apprehending the arrest at the hands of police in connection with Crime No.206/2025 registered with Police Station Ram Nagar, Gondia, District Gondia for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of report lodged by the victim aged about 23 years on an allegation that she got acquaintance with the present applicant in the year 2017. He has sent her friend request through Facebook and she has accepted, thereafter, the friendship was developed between them and said friendship resulted into a love affair and therefore, there was a physical relationship

between them. It is alleged by her that present applicant has promised her for marriage and on the promise of marriage, subjected for the forceful sexual assault. 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 it was a consensual relationship. Mere breach of the promise is not sufficient to attract the provisions of the Bharatiya Nyaya Sanhita, 2023 under Section 69. Thus, as far as the custodial interrogation is concerned, which is not required. In view of that, interim protection granted to the present applicant deserves to be confirmed.

4. Learned APP and learned Counsel for the intervenor strongly opposed the same and submitted that there was a possibility to tamper the prosecution evidence. Moreover, there are chats and the present applicant attempted to have access the Facebook account of the victim and therefore, the attempt by the present applicant to tamper the prosecution evidence appears to be there. In view of that, the application deserves to be rejected. Learned APP further submitted that applicant is not cooperating with the investigating agency.

5. On hearing both sides and on perusal of the recitals of the FIR, it reveals that there was an

acquaintance between the victim and the applicant since 2017. A love affair was developed between them and out of that love affair, physical relationship was developed between them. Thus, apparently, it is a consensual relationship. As far as the contention of the learned Counsel for the intervenor and learned APP is concerned, I have perused the entire record which is placed on record. The e-mail address of the present applicant nowhere reflects that it was the present applicant, who attempted to have access the Facebook account of the victim. There are various chats, but from those chats also it nowhere reveals it was the present applicant who has attempted to have access the Facebook. At this stage, the observation of 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)*** is relevant which is reproduced 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 the light of the above observation, the interim protection granted to the present applicant deserves to be confirmed. At the same time, considering the allegation levelled against the present applicant that attempt was made to tamper the prosecution evidence, some conditions requires to be imposed. In view of that, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the present applicant by order dated 24.06.2025 is hereby confirmed on the condition that the applicant shall attend the concerned Police

Station once in week on Monday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iii) The applicant shall produce all the information as far as his mobile phone is concerned, before the Investigating Office.

(iv) The applicant shall not enter into the jurisdiction of Ramnagar Police Station, till the culmination of trial.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or through electronic media and there should not be an attempt to have access the Facebook account of the victim. One single attempt if brought to the notice of this Court would lead to the cancellation of bail.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)