



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

CRIMINAL APPLICATION (ABA) NO.455 OF 2025
(Kailash s/o Jagdev Gavargur 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. R.V. Gahilot, Advocate for the applicant.
Ms T.H. Udeshi, APP for the State.
Ms S.H. Bhagat, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 24, 2025.

Apprehending the arrest at the hands of police in connection with Crime No.97 of 2025 registered with Police Station Hiwarkhed, District Buldhana, for the offence punishable under Sections 64(2)(m), 108, 351(2) and 351(3) 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 a report lodged by the victim aged about 43 years, on an allegation that present applicant is also a resident of the same village and dealing with manufacturing and selling of the liquor. There was a friendship between her and the present applicant, and present applicant has subjected her for forceful sexual assault and also threatened her. Due to the threatening at the hands of the present applicant, her husband has committed suicide. On the basis of the said report, police have registered the crime.

3. Learned Counsel submitted that the FIR was lodged belatedly. As far as the allegations levelled in the FIR are concerned, which sufficiently shows that there was a consensual relationship between the victim and the present applicant. He has already cooperated with the investigating agency, and therefore, his custodial interrogation is not required. In view of that, he be released on anticipatory bail.

4. Learned APP and learned Counsel for the victim strongly opposed the application and submitted that considering the nature of the threatening, the husband of the victim has already committed suicide. In view of that, the application deserves to be rejected.

5. On hearing both the sides and on perusal of the investigation papers it reveals that there was a friendship between the victim and the present applicant. From the recitals of the FIR itself it reveals that there was a consensual relationship. This aspect is 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.”

6. In view of the above, the case for grant of pre-arrest 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 - Kailash s/o Jagdev Gavargur in connection

with Crime No.97 of 2025 registered with Police Station Hiwarkhed, District Buldhana, for the offence punishable under Sections 64(2)(m), 108, 351(2) and 351(3) of the Bharatiya Nyaya Sanhita, 2023, be released on 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 a.m. and 01.00 p.m., till filing of the charge-sheet and shall cooperate with the investigating agency.

(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.

7. The contravention of any of the condition would lead to the cancellation of bail.
8. The application stands disposed of.
9. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)