



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

CRIMINAL APPLICATION (ABA) NO.497 OF 2025

Sumedh @ Sumit Shalikram Gawai

Vs.

State of Maharashtra, through Police Station Officer, Chikhli Police Station,
District Buldhana

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

Court's or Judge's orders

Mr. N. L. Jaiswal, Counsel for the applicant.

Mr. Nitin Rode, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/07/2025

1. Apprehending the arrest at the hands of police in connection with Crime No.427/2025 registered with Police Station Chikhali, District Buldhana for the offence punishable under Sections 74, 75, 64(2)(f), 351(2) and 333 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 24 years on an allegation that on 02/06/2025 she was subjected for the forceful sexual assault by the present applicant. 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 the applicant and the victim are having relationship from last three years, there are WhatsApp chat exchanged between both of them, as such, this is consensual relationship, and therefore, the custodial interrogation of the present applicant is not required.

4. Learned APP strongly opposed the said application and submitted that considering the allegation levelled against the present applicant, his custodial interrogation is required and prays for rejection of the application.

5. On hearing both the sides and on perusal of the recitals of the FIR and the WhatsApp chat, it reveals that a consensual relationship was developed between them. Now the applicant has already attended the Police Station, as per the directions of this Court. There is no complaint that he has not cooperated with the investigating agency. In view of that his physical custody is not required.

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 observation, the case for grant of pre-arrest bail is made out by the present applicant and therefore, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the present applicant by order dated 09.07.2025 is hereby confirmed on the condition that 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.

(iii) 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.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)