



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

CRIMINAL APPLICATION (BA) NO.1194 OF 2024

Urvel s/o Sheshrao Dongre

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Yashodhara Nagar, Nagpur 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. S. G. Karmarkar, Counsel for the applicant.

Mr. N. B. Jawade, APP for the non-applicant No.1/State.

Mr. R. R. Maddalwar, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/03/2025

1. The application is for grant of bail in connection with Crime No. 559/2024 registered with Police Station Yashodhara Nagar, Nagpur for the offence punishable under Sections 376(2)(n), 376(2)(h) of the Indian Penal Code. The applicant came to be arrested on 23.10.2024 and since then he is behind bar.

2. Heard learned Counsel for the applicant, who submitted that the victim who is elder to the present applicant has lodged the report on an allegation that the present applicant on the promise of marriage subjected her for sexual assault which resulted into her pregnancy and she delivered a girl child. On the basis of the said report, police have registered the crime. He submitted that from the

statement of the victim itself, it appears to be a consensual relationship between the victim and the present applicant. Now the investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required. He submitted that a mere breach of promise is not sufficient to attract the provisions of Section 376 of the Indian Penal Code. In view of that, the applicant be released on bail.

3. Learned APP and learned appointed Counsel for the non-applicant No.2 strongly opposed the said application on the ground that under the misconception of the fact that he would marry with her, he subjected her for sexual assault and therefore, the intention of the present applicant/accused can be gathered from the said circumstance and therefore, the application deserves to be rejected.

4. After hearing both sides and on perusal of the statement of the victim, it reveals that the present applicant and the victim got acquaintance with each other on August 2023, thereafter the physical relationship was developed between them and subsequently, after delivering the child, she has lodged the report on 11.09.2024. From the statement of the victim, it is apparent that, it appears to be a consensual relationship between them. It reveals that they have visited at the lodge also

wherein they stayed, but she has not made any grievance at the relevant time. Now this aspect whether there is a breach of promise or it was a misconception of fact 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."

5. In the light of the above observation of the Hon'ble Apex Court, the applicant has made out a case for grant of bail. Hence, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Urvel s/o Sheshrao Dongre** shall be released on bail in connection with Crime No.559/2024 registered with Police Station Yashodhara Nagar, Nagpur for the offence punishable under Sections 376(2)(n), 376(2)(h) of the Indian Penal Code, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter into the jurisdiction of Yashodhara Nagar Police Station, till culmination of the trial.

(iv) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

6. The observations are *prima facie* in nature and the trial Court shall not be influenced by the same.

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

(5)

20.ba.1194.2024

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate