

Order Below Exh.1 in Cri.B.Appln.No.177/2022

Shubham Sunil Chandale Vs. State.

CNR NO.MHNS010004722021

Heard: Ld. Adv. Mr. R. J. Kasliwal for the applicant.
Ld. A.P.P. Ms. S. S. Sangle for the State.

Perused the say filed by the complainant.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 in Crime No.215/2021 registered at Police Station, Sarkarwada, Dist-Nashik for the offences punishable under Section 376 of the Indian Penal Code, 1860. It is the case of prosecution in brief that the applicant/ accused befriended the 21 year-old physically challenged victim on instagram and committed sexual intercourse with her on the false promise of marriage and thereby impregnated her. The applicant had concealed that he was married man with a 4 year-old son. The victim was 7 months pregnant when she lodged the FIR.

2. Ld. Advocate for the applicant Mr. Kasliwal has submitted that there was a love-affair between the applicant and the victim. The relationship between the applicant and the victim was consensual. Applicant is 26 years old, while the victim is 21 year-old B.Sc. student. She is a well-educated modern woman who uses Social-media. She was well-aware of the implications of her actions. She had willingly accompanied the applicant on his two-wheeler. The only alleged disability which she has is a hump on her back. Merely because the alleged victim was impregnated, would not convert consensual sex in to an offence of rape. Moreover, the main allegation against the accused is that he committed sexual

intercourse with the victim on the false promise of marriage. However, the applicant is ready to marry the victim. He has been granted divorce by the concerned Court via Video Conferencing. Earlier he could not marry the victim because the divorce proceedings were under way. The victim was aware of the marital status of the accused. Assuming for the sake of argument that she was not aware about his marital status, even then it would only be a case under section 417 of the I.P.C. and not section 376 of the I.P.C. Investigation is over and charge-sheet is filed. Previous bail applications were rejected when the investigation was in progress. Applicant is ready to abide by the terms and conditions imposed by the court. Therefore, no purpose will be served by keeping him behind bars.

3. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that the offence is serious in nature. The applicant is in the habit of impregnating girls on the false promise of marriage. He had represented to the complainant that he is unmarried and that is why she went ahead with him. However, after she became pregnant, the applicant became *in communicado*. When her brother finally traced him, he came to know that the applicant was already married. It is only now (after his first bail application was rejected) that he has stated to the Court that he wants to marry the victim. Previous bail application of the applicant was rejected by a well-reasoned order and there is no change in circumstances thereafter. The victim has now delivered a child. The applicant has spoiled the life of the victim and she does not want to marry him.

4. The victim was admittedly more than 18 years old at the time of the incident. There is no allegation of forcible sexual intercourse. The main allegation against the accused is of committing sexual intercourse on the false promise of marriage. Investigation is over and charge-sheet has been filed. Applicant is ready to abide by the terms and conditions imposed by the Court. In view of the foregoing discussion, I am inclined to allow the application subject to the following terms and conditions.

ORDER

- 1] Application is hereby allowed.
- 2] Applicant Shubham Sunil Chandole be released on bail by executing P.R. and S.B. of ₹30,000/- with one or two sureties of like amount.
- 3] Applicant shall not directly or indirectly, make any inducement, threat or promises to any person acquainted with the facts of accusation, so as to dissuade him/her from disclosing such facts to the Court or to the police officer and shall not tamper with the prosecution evidence in any manner.
- 4] Applicant shall not commit any offence and shall attend all dates of hearing.
- 5] Applicant is duty bound to inform the I.O. and the court about his change of address, if any.
- 6] Applicant shall furnish residence and ID proof of two blood relatives to the I.O.

Nashik
23/02/2022

Mridula Bhatia
District Judge-2 and Additional
Sessions Judge, Nashik.