

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5024/2015

Sanjay Maroti Nipte & others.
...Applicants..

Versus

The State of Maharashtra,
through the Police Sub Inspector,
Ambad Police Station, Ambad.
Dist.Jalna & another.
...Respondents...

.....
Shri Abhishek C. Deshpande, Advocate for applicants.
Shri K.S. Patil, APP for respondent no.1.
.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 01.10.2015

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] The FIR in Crime No.88/2015 is under challenge in the present application. Learned counsel for the applicants vehemently contended that the FIR itself shows that there was consent and as such no offence of rape can be said to have been committed, also looking to the age of the complainant.

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3] We have perused the FIR and in particular the last paragraph of the FIR, which shows absence of "unequivocal voluntary agreement", which are the words introduced by amendment in the definition of Section 375 Explanation 2 of the Indian Penal Code, 1860. In view of the said allegation in the FIR about absence of unequivocal voluntary agreement, we think the only way out for the applicants is to take recourse to the alternative efficacious remedy, if so advised. That being so, we pass the following order.

ORDER

Criminal Application No.5024/2015 is disposed of with liberty in favour of the applicants to apply for discharge upon filing of the final report / charge-sheet if any, before the competent Court. The concerned Police Station Officer to file final report / charge-sheet, if any, within two months from today.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)