

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 CRIMINAL APPLICATION NO. 4282 OF 2016

BABURAO V NAIR

VERSUS

THE STATE OF MAHARASHTRA

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Mr. V.D.Salunke h/f Mrs.C.R.Kutti - Choudhary,
Advocate for Applicant.

Mr. N.B.Patil, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 20th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 118/2016 registered at Harsool police station, Aurangabad, Dist. Aurangabad for the offence punishable U/s 376 of the Indian Penal Code, by this application is seeking pre-arrest bail.

2. Heard the learned counsel for the applicant/accused. He argued that the transaction of the informant with the applicant was a commercial transaction and to harass the applicant, allegations of rape are being made

and that too after lapse of 2 years. My attention is drawn to the letter dated 20/03/2016 written by the wife of the applicant to the Police Inspector, Jawahar Nagar police station, Aurangabad.

3. Learned A.P.P. opposed the application by contending that apart from the statement of the victim, statement of her relative Amar is also recorded and the same is corroborating the version of the prosecutrix.

4. Perused the papers of investigation including the F.I.R. lodged by the prosecutrix on 21/07/2016. The prosecutrix is a matured lady, aged about 38 years. The recitals in the F.I.R. goes to show that she was having friendly relations with the wife of the present applicant and then she started to give hand loan to the wife of the applicant. The F.I.R. also reveals that marriage of daughter of sister of the informant was fixed in December, 2015 and, therefore, she was in need of money. The informant/prosecutrix further averred that she demanded money from the applicant, but the applicant refused to pay and thereafter quarrel ensued between them. On this back-ground facts, the averments for the offence punishable u/s 376 of the Indian Penal Code are to the effect that the prosecutrix was called at Ahmadabad by the applicant on 17/12/2013. They stayed at a lodge in Ahmadabad. Thereafter, the applicant committed forcible sexual intercourse with prosecutrix for 5 days with an assurance of marriage with her. At this stage, it is apposite to know that the prosecutrix is well aware about the marriage of

the applicant, as wife of the applicant is friend of the prosecutrix.

5. Though the incident of rape allegedly took place at Ahmadabad in the year 2013, the F.I.R. came to be lodged on 21/07/2016 and that too after demand of money by the prosecutrix and refusal by the applicant.

6. Sexual intercourse by a man with woman without her consent and against her will do constitute the offence of rape. Consent is an act of reason accompanied with deliberation, the mind weighing as in balance, the good and evil on both sides. Consent implied active will in the mind of the person to permit doing an act complained of. It also implies knowledge of what is to be done. Will, as understood, is once under voluntary act, wish or desire.

7. In the case in hand, the applicant was a person acquainted with the prosecutrix, she being friend of his wife. She joined the company of the applicant at Ahmadabad and had chosen to stay with him for 5 days. She is alleging rape during that period by lodging the F.I.R. on 21/07/2016. In the light of this, at the time of trial, it will have to be determined whether the offence falls under any of the categories mentioned u/s 375 of the Indian Penal Code. Suffice it to say that considering the nature of averments against the present applicant, his custodial interrogation is not at all warranted. Hence, the following order.

(i) The Criminal Application is allowed.

(ii) In the event of his arrest in Crime No. 118/2016 registered at Harsool police station, Aurangabad, Dist. Aurangabad for the offence punishable U/s 376 of the Indian Penal Code, the applicant Baburaj V.K.Nair be released on bail on executing P.R. Bond of ₹ 25,000/- [Rupees Twenty Five Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution. till filing of the charge sheet.

(v) The applicant shall attend the concerned police station on every alternate Sunday between 11.00 a.m. and 1.00 p.m. till filing of the charge sheet.

[A.M.BADAR, J.]