

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

Criminal Application No. 4329 of 2016

District : Aurangabad

Syed Yassin Syed Osman,
Age : 21 years,
Occupation : Labour,
R/o. Mulla Galli, Harsul,
Aurangabad.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

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Mr. V.A. Bagdiya, Advocate, for the applicant.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 22ND AUGUST 2016

ORAL ORDER:

The applicant / accused in Crime No. 76/2016, for offences punishable under Sections 376 and 506 of the Indian Penal Code, registered with Police Station, Cantonment, Aurangabad, at the instance of the prosecutrix, by this application, is praying for pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused as well as the learned Addl. Public Prosecuor for the respondent.

3. The learned Addl. Public Prosecutor argued that by giving false promise of marriage, the applicant indulged in committing rape on the prosecutrix.

4. Perused the FIR as well as papers made available. Perusal of the FIR lodged on 19.02.2016 by the prosecutrix goes to show that she became acquainted with present applicant and thereafter indulged in sexual relations with him as the applicant promised to marry her. Ultimately the prosecutrix married some another person and as per averments in the FIR, as present applicant informed her husband about their illicit liaison, her husband had divorced her in October 2015. According to the prosecutrix, subsequently present applicant had raped her on 30.10.2015. As stated earlier, report of these incidents was lodged on 19.02.2016.

5. It is seen that prior to this FIR, the prosecutrix has lodged another FIR against the applicant on 16.01.2016 which has resulted in registration of Crime No. I-12/2016 for the offence punishable under Section 394 of the IPC. Perusal of the FIR goes to show that second marriage of the

prosecutrix was broken because her husband came to know about relations of the prosecutrix with the present applicant. Even otherwise, on 16.01.2016 when first FIR was lodged, the prosecutrix was well aware about what happened with her on 30.10.2015. This fact is not included by her in the FIR lodged on 16.01.2016. She is coming up with the theory of forcible sexual intercourse by the applicant on her on 30.10.2015 by FIR dated 19.02.2016.

6. Prima facie it is seen that the prosecutrix, who is a woman of consenting age, already married and having children out of that wedlock, had consensus sex with the present applicant. In this view of the matter, liberty of the applicant needs to be protected and, therefore, the following order :-

(a) The application is allowed.

(b) The interim order dated 5th August 2016, granting ad interim anticipatory bail to the applicant, is confirmed on the same terms and conditions.

(c) As a condition of this order, the applicant shall report to concerned Police Station on 28th August 2016, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation.

(d) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(e) The applicant shall not tamper with the prosecution evidence in any manner whatsoever.

7. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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