

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

**914 CRIMINAL APPLICATION NO. 4466 OF 2016**

**HARIDAS VITTHAL SAKE  
AND ANR.**

**VERSUS**

**THE STATE OF MAHARASHTRA  
AND ORS.**

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Mr. A.S.More, Advocate for Applicants.

Mr. S.B.Yawalkar, A.P.P. for R – 1 - State.

Mr. R.P.Phatke, Advocate for R – 3 - absent.

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**CORAM : A.M.BADAR, J.**

**DATE : 31<sup>st</sup> AUGUST, 2016**

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**PER COURT :**

1. The applicants/accused in Crime No. 176/2016 registered at Ahmednagar Taluka police station, Dist. Ahmednagar for the offences punishable U/ss 376,311 read with 34 of the Indian Penal Code and u/ss 5 and 6 of the Protection of Children from Sexual Offenes Act at the instance of Subhash Maruti Shinde by this application are seeking pre-arrest bail.

2. Heard learned counsel for the applicants. He submits that the allegations against the present applicants are to the effect that they caused mis-carriage of the prosecutrix without her consent. According to the learned counsel, there is *prima facie* evidence to connect the applicants to the crime in question. He further argued that according to the prosecution case, son of applicant No. 1 had committed rape on the prosecutrix. He further submits that in-fact son of applicant No. 1 had married the prosecutrix on 20/03/2016. Therefore, there is no question of either rape or causing abortion without her consent.

3. Learned A.P.P. opposed the application by contending that the papers of investigation shows that parental relatives of the prosecutrix were not present at the hospital where she was aborted. As she was minor, her consent for abortion is not material.

4. Learned counsel for respondent No. 3 is absent.

5. Perused papers of investigation. It appears that the pregnancy of the prosecutrix was medically terminated at Satalkar hospital, Ahmednagar on 16/03/2016. Consent form of the said hospital for medical termination of pregnancy of the prosecutrix does not bear the signature of any of the applicants. It appears that after conducting several tests, pregnancy of the prosecutrix was terminated at a centre which is duly authorized to conduct medical termination of pregnancy. Medical case papers of termination of pregnancy

of the prosecutrix does not bear the signatures of present applicants. Rather those bears signatures and thumb impression of the prosecutrix.

6. So far as the offence of rape is concerned, *prima facie*, there are no allegations against the present applicants even of abatement.

7. In the result, liberty of both the applicants needs to be protected. Hence, the following order.

(i) The application is allowed.

(ii) In the event of their arrest in Crime No. 176/2016 registered at Ahmednagar Taluka police station, Dist. Ahmednagar for the offences punishable U/ss 376,311 read with 34 of the Indian Penal Code and u/s 5 and 6 of the Protection of Children from Sexual Offences Act, applicant No. 1 Haridas Vitthal Sake and applicant No. 2 Tukaram Bhausahab Kale be released on bail on executing P.R. Bond of ₹ 10,000/- [Rupees Ten Thousand] each and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicants 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 applicants shall not tamper the evidence of the prosecution.

(v) The applicants shall attend concerned police station on 11/09/2016 in between 11.00 a.m. and 01.00 p.m. and they should co-operate the Investigating Officer in the investigation of the crime in question.

**[A.M.BADAR, J.]**