

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

**910 CRIMINAL APPLICATION NO. 4839 OF 2016
WITH
APPLN/5063/2016
IN
APPLN/4839/2016**

DADARAO SHESHRAO JAGTAP

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.J.Salunke, Advocate for Applicant.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 28th SEPTEMBER, 2016

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PER COURT :

1. Applicant/accused in Crime No. 59/2016 registered at Ashti police station, Dist. Jalna for the offences punishable u/ss 376,323,504,506 of the Indian Penal Code at the instance of prosecutrix, by this application is seeking his release on bail.

2. Heard learned counsel for applicant/accused. Learned counsel argued that bare perusal of F.I.R. goes to show that the averments made do not fall under the definition of 'rape' and, therefore, pre-trial detention of present applicant

in the crime in question is not warranted. An attempt was made to show that prosecutrix is accustomed to make such allegations against other persons and to demonstrate that even applicant had lodged report against prosecutrix on 20/07/2016. With this, learned counsel for applicant argued that possibility of false implication of applicant in the crime in question can not be ruled out.

3. Heard learned A.P.P. She argued that statements of Bhagwanrao Ramchandra Khandagale as well as Manager of several lodges shows that applicant accompanied by prosecutrix had been to the house of Bhagwanrao Khandagale as well as in several lodges where the incident in question took place. Therefore, in submission of learned A.P.P., version of prosecutrix is reliable.

4. I also heard learned counsel for informant. He argued that as per amended definition of offence of 'rape', it can not be said that prosecutrix had consented for the act. Learned counsel further argued that there are threats to the life of prosecutrix emanating from the kiths and kin of present applicant.

5. Perused papers of investigation including report lodged by prosecutrix on 08/08/2016. At this stage, it is apposite to note that prosecutrix is matured lady of 36 years of age having her husband and 2 children. The Applicant is reported to be her neighbour. On this factual back-drop, averments in the F.I.R. are to the effect that initially applicant

developed friendly relations with husband of prosecutrix and then he allured the prosecutrix by assuring that he will take care of future of her children. The prosecutrix then stated that the applicant started speaking obscene things with her and he threatened her to make that recording public. With this threat, according to prosecutrix, the applicant committed rape on her repeatedly from May, 2013 to 13/07/2016. The F.I.R. is conspicuously silent about reciprocal chat of the prosecutrix with the applicant. The prosecutrix, who is married lady having 2 children, has stated that under threats of the applicant, she had accompanied him to the house of Bhagwanrao Khandagale at Mantha and then to several public lodges at Aundha Nagnath, Shegaon, Parbhani Pandharpur, Jalna, Manwat. The F.I.R. is conspicuously silent as to the attempts, if any, by prosecutrix in order to extricate herself from the clutches of the applicant during her visit to several public lodges at different stations during long span of time ranging from May, 2013 to 13/07/2016. On this back-drop, it needs to be noted that consent is an act of reason accompany with deliberation, then mind weighing as a balance the good and evil on both sides. Similarly, will as understood is ones own voluntary act, wish, deliberate or fixed desire. Section 90 of the Indian Penal Code provides that consent given under misconception of fact or fear is not a free consent. Even if all these aspects are considered, taking into account the nature of evidence against applicant, I am of the considered opinion that his further pre-trial detention is not warranted. Hence, the following order.

- (i) The application is allowed.

(ii) Applicant Dadarao Sheshrao Jagtap in Crime No. 59/2016 registered at Ashti police station, Dist. Jalna for the offences punishable u/ss 376,323,504,506 of the Indian Penal Code be released on bail on executing P.R. Bond of Rs. 20,000/- [Rupees Twenty Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, 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.

(v) The applicant shall not contact prosecutrix or any of her relatives.

(vi) The Applicant shall co-operate the trial Court in expeditious disposal of trial, if any, against him.

6. Criminal Application stands disposed of. In view of disposal of main application, Criminal Application No. 5063 of 2016 also stands disposed of.

[A.M.BADAR, J.]