

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

CRIMINAL APPLICATION NO.4871 OF 2016

Santosh s/o Uttamrao Kharat,
Aged 24 years, Occu. Labour,
R/o Dhawade (Thar), Taluka
and District Jalna

..Applicant

Versus

1. The State of Maharashtra
through Police Station,
Taluaka Jalna, Dist.Jalna

2. The Superintendent of Police,
Jalna, Disrict Jalna

..Respondents

Mr R.R. Imale, Advocate for applicant
Mr S.B. Yawalkar, A.P.P. for respondents

CORAM : A.M. BADAR, J.

DATE : 20 September 2016

PER COURT

1. The applicant/accused in Crime No.191/2016, registered at Taluka Jalna Police Station, for the offences punishable under Sections 378 (2) (n), 317, 506 read with Sec. 34 of Indian Penal Code, is seeking pre-arrest bail.

2. Heard learned Counsel for the applicant/accused. He argued that perusal of the F.I.R. goes to show that the alleged incident was not of rape, but it was a consensual sex between two grown up adult persons. Learned Counsel further argued that there are no averments regarding kidnapping of minor son of prosecutrix named as Yash.

3. Leaned A.P.P. opposed the application by contending that there are specific averments of commission of rape and even at the time of lodging the F.I.R., prosecutrix was pregnant.

4. Perused the F.I.R. as well as papers of investigation. Prosecution as reflected from papers of investigation is to the effect that after death of her husband and within two and half months after that death, the prosecutrix became acquainted with the applicant and that acquaintance turned into sexual relationship between them. The prosecutrix has averred that the applicant had promised to marry her and committed rape on her. The couple then stayed at Mumbai for some time. Thereafter, they were brought to their village by brothers of the applicant. In the meantime, the prosecutrix has delivered a male child out of that relationship. According to prosecution case, that male child named Yash is kidnapped by co-accused Vishnu. It is seen from the F.I.R. that even thereafter, the relationship between the prosecutrix and the applicant continued. Thereafter, the F.I.R. came to be lodged on 9.5.2016 with an averment that applicant has refused to marry her.

5. Perusal of the F.I.R. as such goes to show that there was sexual relationship between the prosecutrix and the applicant for a period of about seven years. During that period, the prosecutrix never complained of rape by the present applicant. On the contrary, as per her version, they stayed together as husband and wife and one male child was even born out of that relationship. The F.I.R. itself shows that the same was lodged only because the applicant refused to marry the prosecutrix.

6. The averments in the F.I.R. prima facie reflect case of consensual sex between two adult grown up persons. The prosecutrix

was widow at the time of commencing of that relationship. She is stated to be thirty years of age. The applicant is twenty-four years old. Considering the nature of evidence available against the applicant, his custodial interrogation is not necessary. Therefore, the following order :

ORDER

(I) The application is allowed.

(II) The order dated 31st August 2016 granting ad-interim anticipatory bail to the applicant is confirmed on the same terms and conditions.

(III) In addition, the applicant to attend the concerned Police Station on every second and fourth Sunday of the month between 11.00 a.m. and 1.00 p.m. till filing of the charge-sheet.

(A.M. BADAR, J.)

vvr