

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

Criminal Application No. 5302 of 2016

District : Beed

Suresh s/o. Bhaskar Khadke,
Age : 25 years,
Occupation : Agriculture,
R/o. Asardhva,
Taluka : Dharur,
District : Beed.

.. Applicant.

versus

1. The State of Maharashtra.

2. The District Superintendent of
Police,
Beed, District : Beed.

.. Respondents.

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Mr. Anil M. Gaikwad, Advocate, for the applicant.

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 4TH OCTOBER 2016

ORAL ORDER:

Heard.

2. The applicant / accused in Crime No.
145/2016 for offences punishable under Sections 376,

504, 506, read with Section 34 of the Indian Penal Code, registered with Police Station, Dharur, District Beed, by this application, is seeking pre-arrest bail.

3. Heard the learned Counsel appearing for the applicant / accused. He argued that initial version of the prosecutrix, for offences punishable under Sections 323, 504 and 506 of the IPC against the applicant, is with an averment that the applicant had given fist and kick blows to her. Subsequently after two months, she came with a version of commission of rape on her.

4. The learned Addl. Public Prosecutor opposed the application by contending that the offence is serious and the same is witnessed by Sadhu Tarkase. The learned Addl. Public Prosecutor drew my attention to the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure and contended that there is corroboration to the version of the prosecutrix, dis-entitling the applicant for the relief claimed.

5. Perused papers of investigation including the report of non-cognizable case lodged on 06.06.2016. The prosecutrix is sister-in-law of the present applicant. She reported that on 06.06.2016, the applicant assaulted her by means of fist and kick

blows by taking exception to her act of washing utensils on his land. Thereafter, on 13.08.2016, the prosecutrix lodged a report while accompanied by Mudrika Sadhu Tarkase, with an averment that the present applicant had committed rape on her and the incident is seen by Sanjay Deshmukh.

6. Perusal of papers of investigation shows that Sanjay Deshmukh has disclosed before Police that he heard noise of quarrel and therefore rushed to the spot to see the prosecutrix quarreling with her sister-in-law Meena on trifle reason and there was nobody else on the spot. Subsequent statement of the prosecutrix recorded under Section 164 of the Cr.P.C., which is adding embellishment to her version no.2 reflected in the FIR, states that Sadhu Tarkase had seen the incident. Statement of Sadhu Tarkase shows that after hearing noise, he rushed to the spot to see the applicant coming out of the house of the prosecutrix.

7. The offence is registered at the instance of sister-in-law of the applicant. Prima facie it appears that the prosecuting party and the applicant were not sharing cordial relations because of dispute over open land. Initial version is in respect of causing hurt. After two months, report of rape is lodged. The woman accompanying the prosecutrix was none else but daughter of one of the alleged eye

witness who is not even named in the FIR. The person named as witness in the FIR is not corroborating the version of the prosecutrix.

8. In this view of the matter, liberty of the applicant gets precedence over interest of the investigator in custodial interrogation of the applicant.

9. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The order dated 22nd September 2016, granting ad interim anticipatory bail to the applicant, is confirmed on same terms and conditions.

(c) In addition, the applicant shall attend the concerned Police Station on 13th & 20th October 2016 in between 11.00 a.m. and 01.00 p.m. and cooperate the investigator in investigation of the crime in question.

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

(A.M. BADAR)
JUDGE

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