

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

Criminal Application No. 5865 of 2016

District : Nanded

Kundan s/o. Roopsingh Jadhav,
Age : 29 years,
Occupation : Labour,
R/o. Kasar Peth,
Taluka : Mahur,
District : Nanded.

.. Applicant.

versus

The State of Maharashtra,
through Police Inspector,
Police Station, Mahur,
District : Nanded.

.. Respondent.

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Mr. Pratap P. Mandlik, Advocate, for the applicant.

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 25TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 68/2016 registered with Mahur Police Station, District Nanded, for offences punishable under Sections 306, 376 and 506 of the Indian Penal Code, by this application, is seeking his release on bail after

filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused and the learned Addl. Public Prosecutor appearing for the respondent / State.

3. The learned Addl. Public Prosecutor opposed the application by submitting that statements of parental relatives of the deceased shows that she committed suicide as after impregnating her, the applicant refused to marry her. Therefore, in submission of the learned Addl. Public Prosecutor, the applicant is not entitled for bail.

4. I have carefully considered the rival submissions and perused the charge-sheet.

5. Deceased daughter of the informant, as per the charge-sheet was 23 years of age at the time of her suicidal death. Her date of birth is stated to be 13.05.1995 as per school record. Her alleged oral dying declaration to her mother and other relatives is to the effect that the present applicant committed rape on her after promising to marry her, thereby impregnating her. Then he refused to marry her and therefore she consumed poison.

6. As the deceased was of about 22½ years of age at the time of alleged act of rape on her by the

present applicant, prima facie it is seen that sexual relations between them were consensual. The deceased was fully matured adult lady. So far as offence punishable under Section 306 of the IPC is concerned, according to the prosecution case, as the applicant refused to marry the victim after impregnating her, she died suicidal death. Section 107 of the IPC requires *mens rea* and without knowledge and intention there cannot be abetment. The applicant may be a reason for committing suicide by the victim girl. However, one will have to ascertain whether the applicant intended that the victim should commit suicide and such knowledge was attributable to him.

7. As the charge-sheet is filed after completing investigation of the crime in question, considering the nature of offence and the nature of evidence available against the present applicant, his further pre-trial detention is not warranted.

8. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 25,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant / accused shall abide by the following directives :-

(i) 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.

(ii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) The applicant shall not repeat commission of similar type of offences in future.

(d) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

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