

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.344 of 2016

(Rajendra s/o Vasantrao Tale

vs.

State of Maharashtra, through P.S.O. Aheri, Tah. and Dist. Gadchiroli)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

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Shri R.R. Vyas, Advocate for the Applicant.

Shri S.A. Ashirgade, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.

DATE : 6th SEPTEMBER, 2016.

Heard the learned Counsel for the applicant and the
learned A.P.P. for the State.

Perused the reply filed by the prosecution.

From the allegations made in the F.I.R., it appears that it is doubtful, if the essential ingredient of the offence of rape punishable under Section 376 of the Indian Penal Code, that is absence of consent, is *prima facie* fulfilled or not. The prosecutrix is aged about 31 years old and the incident of rape had taken place almost about 4½ months prior to filing of the F.I.R. on 16/12/2015. It is also seen that the prosecutrix maintained physical relations with the applicant continuously since then i.e. from 26/02/2011 onwards, although she says that it was on believing in the promise of marriage given by the applicant. A question is, as to whether the prosecutrix would continue to believe in such a promise for a period of more than

4½ years or would realise soon that the promise so given was false to the knowledge of the applicant. This question has been left unanswered in the F.I.R. filed against the applicant.

In fact, the learned Counsel for the applicant has made a statement, on instructions, that the prosecutrix and the applicant have performed marriage and now they are living together as wife and husband.

In these circumstances, I am of the opinion that this is a fit case for grant of anticipatory bail. Hence, the order.

The application is allowed.

The interim anticipatory bail granted to the applicant on 09/06/2016 by this Court is hereby confirmed on the same conditions.

JUDGE

*sdw

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 07/09/2016