

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

Criminal Application [APPP] No.496 of 2018
in
Criminal Application [ABA] No.135 of 2018

Gopal Babulal Choudhary

vs.

State of Maharashtra, through P.S.O. Khamgaon City, District Buldana

=====

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

=====

Court's or Judge's Orders

*Shri Avinash Gupta, Senior Advocate with Shri Aakash Gupta, Advocate for
the Applicant.*

Shri H.D. Dubey, A.P.P. for the Non-Applicant/State.

Shri R.D. Hajare, Advocate for the Intervenor/Complainant.

CORAM : S.B. SHUKRE, J.
DATE : 20th MARCH, 2018.

Heard.

The learned Senior Counsel for the applicant has
no objection.

The application is allowed and disposed of in
terms of its prayer clause.

Criminal Application [ABA] No.135/2018 :

Heard the learned Senior Counsel for the applicant
and the learned A.P.P., who is assisted by the learned Counsel
for the intervenor/complainant.

I have gone through the reply of the prosecution
and also the F.I.R. It appears that the F.I.R. has been filed
after a considerable delay caused from the date of incident,
which took place, according to the prosecutrix, firstly, about 8
to 10 days prior to Dashhera of 2017, it fell approximately on
30th September, 2017 and secondly about 15 days after the
first incident. The F.I.R. has been lodged on 11/02/2018.

It is also seen that even though, according to the prosecutrix, the first incident in which the applicant is alleged to have indulged in sexual intercourse with her was without her consent and the prosecutrix left her manual job with the applicant, the prosecutrix again resumed her manual job about 15 days thereafter and then the prosecutrix again alleged that the applicant indulged in same behaviour as he did previously.

The prosecutrix is a mature woman, aged about 32 years and appears to be knowing the consequences of the acts which she has alleged to have been committed against her will by the applicant and yet she has chosen to join the job with the applicant on the second occasion and not to approach the police immediately after what she stated to have happened with her against her will.

In view of the above, I do not think that any purpose would be served by declining anticipatory bail to this applicant.

The learned Senior Counsel for the applicant, at this stage, submits that the applicant has already given his consent in writing that he is willing to undergo any medical examination. He also submits that the blood sample of the applicant on the last occasion could not be collected because DNA kit was not available.

The learned Counsel for the complainant submits that after grant of interim anticipatory bail, two sons and relatives of this applicant entered into the house of prosecutrix and threatened her. However, there is no such incident brought to the notice of this Court by the prosecution. Even if it is so, the allegation, I must say, is against the sons and relatives of the applicant, all of whom

are major and not against this applicant. Therefore, unless it is *prima facie* demonstrated that whatever was done by those persons was at the behest of the applicant, the applicant could not be denied bail only on this count. I would say, no such connection, *prima facie*, is established so far.

In view of the above, I am inclined to grant this application.

The application is allowed and it is directed that the interim bail granted by this Court to the applicant on 6th March, 2018 is hereby confirmed on same conditions except for the condition regarding attendance of the applicant to the police station and now it is directed that the applicant shall attend the police station, as and when required by the Investigating Officer.

The application is disposed of accordingly.

JUDGE

*sdw