

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

CRIMINAL APPLICATION (ABA) NO.138 OF 2019

(Pawan s/o Ganesh Chauragade Vs. State of Maharashtra thr. PSO PS Paratwada,
Tah. Achalpur, Dist. Amravati)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri S.G. Karmarkar, Advocate for Applicant.
Shri V.P. Gangane, APP for Non-Applciant/State.

CORAM: M.G. GIRATKAR, J.

DATE: 5th MARCH, 2019.

Heard Advocate Shri S.G. Karmarkar for the applicant.

He has pointed out FIR lodged by the complainant and submitted that sexual intercourse took place with the consent of the victim. She is aged about 28 years. From the perusal of report, it appears that accused started love affair with her, he did sexual intercourse under the promise of marriage. Learned Counsel has submitted that sexual intercourse took place with her consent, she is major therefore, offence punishable under section 376 of IPC is not attracted as per the definition of 375 of IPC.

Whether she had given free consent or not is to be decided by the Trial Court. The Hon'ble Apex Court in the case of *State of Uttar Pradesh v. Naushad* has observed that sexual intercourse under the promise of marriage is not consent. In such situation, whether it was a free consent or

not is to be decided by the Court. The definition of consent is given under section 90 of IPC. At this stage, it cannot be said that complainant given free consent for the sexual intercourse. The consent obtained under the promise of marriage is not a free consent. As per the contents of FIR, the present applicant obtained her consent under the promise of marriage. Moreover his custody is required to collect the medical evidence. Hence, the application is rejected.

JUDGE

NSN