

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

CRIMINAL APPLICATION (ABA) NO.183/2019
Gautam Namdeo Shejul

..VS..

The State of Mah., at the instance of Risod Police Station.

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

Court's or Judge's Order

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Shri D.J.Shejul, Counsel for the applicant.
Shri V.P.Gangane, Addl.P.P. for the State.

CORAM : M.G.GIRATKAR, J.
DATED : MARCH 27, 2019.

1. The present application under Section 438 of the Code of Criminal Procedure is filed for grant of anticipatory bail.
2. Heard learned counsel Shri D.J.Shejul for the applicant and learned Additional Public Prosecutor Shri V.P.Gangane for the State.
3. Learned counsel Shri D.J.Shejul for the applicant pointing out First Information Report submits that complainant is aged about 19 years. The First Information Report lodged by the complainant itself shows that she herself fled away with the applicant and, thereafter, by consent sexual intercourse took place. Therefore, the same does not amount to rape as defined under Section 375 of the Indian Penal Code.
4. Learned counsel Shri D.J.Shejul placed reliance on decision of this Court (Coram : Prakash D.Naik, J.) in the

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case of Suraj Krushna Machhi vs. The State of Maharashtra in Criminal Anticipatory Bail Application No.430/2019 decided on 20.2.2019. This Court in the said case observed that the applicant promised to marry and under the promise of marriage had sexual intercourse. Though the applicant and the victim therein were in relationship since 2016, report was lodged on 31.1.2019 and the application for grant of anticipatory bail was allowed. Learned counsel also placing another reliance on decision of this Court (Coram : Mrs.Mridula Bhatkar J.) in the case of Akshay Manoj Jaisinghani vs. The State of Maharashtra in Anticipatory Bail Application No.2221/2016 decided on 9.1.2017, points out paragraph No.2 and submits that intercourse took place with consent and, therefore, the Court found it is not rape.

Learned counsel, therefore, submits that as per decisions cited *supra*, offences registered against the present applicant under Sections 366 and 376 of the Indian Penal Code are not attracted. Therefore, learned counsel prays for grant of anticipatory bail in favour of the present applicant.

5. Learned Additional Public Prosecutor Shri V.P.Gangane strongly objects the present application.

6. The applicant is married person. The complainant is his neighbour. He allured the complainant in the night. When the complainant woke up in the night, he told her that he would perform marry with her by divorcing his wife. He also promised to arrange service for her. Under the false promise made by the applicant, the complainant had gone with the applicant.

7. Whether it was free consent or not, as defined under Section 90 of the Indian Penal Code, is to be decided by the Trial Court after recording of evidence of witnesses.

8. The Honourable Apex Court in the case of State of Uttar Pradesh vs. Naushad reported at (2013)16 SCC 651 held that consent obtained under promise of marriage is not a free consent as defined under Section 90 of the Indian Penal Code.

9. In view of the above, since the offence levelled against the applicant is serious in nature and is against the society, custodial interrogation of the applicant is necessary to collect medical evidence etc.. Hence, the criminal application for grant of bail is rejected and disposed of accordingly.

JUDGE

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