

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

CRIMINAL APPLICATION (ABA) NO.206/2019

Syed Wasim Syed Hasan

..VS..

State of Mah., thr. PSO PS Mehkar, District Buldhana

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

Court's or Judge's Order

.....
Shri M.N.Ali, Counsel for the Applicant.
Shri H.D.Dubey, Addl.P.P. for the State.

CORAM : M.G.GIRATKAR, J.

DATED : APRIL 5, 2019.

1. This is an application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. Heard learned counsel Shri M.N.Ali for the applicant and learned Additional Public Prosecutor Shri H.D.Dubey for the State.
3. Learned counsel Shri Ali for the applicant submits that complainant is married woman. She was having extra marital relationship with the present applicant. Offence under Section 376 of the Indian Penal Code is not made out. Therefore, learned counsel prays for grant of anticipatory bail. In support of his submissions, learned counsel points out a decision of the Division Bench of this Court in the case of Sachin s/o0 Shantaram Potude vs. The State of Mah. and anr, reported at 2018 ALL Mr (Cri) 3816 and submitted that on similar circumstance FIR is quashed by the Division Bench.

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4. Perused report. Perusal of report it appears that the applicant is relative of the complainant. There was dispute between her and her husband. She was living alone. The applicant started love affairs with her. He recorded some conversations in his mobile phone and blackmailed her. She was threatened to show conversations to her husband and on that count he did sexual intercourse with her.

5. At this stage, it cannot be said that offence under Section 376 of the Code of Criminal Procedure is not made out. Mobile phone is to be recovered from the applicant. Custodial interrogation is necessary. The case cited *supra* is on different footings i.e. in respect of quashing of F.I.R.. The applicant is at liberty to move for quashing of F.I.R..

6. At this stage, it appears that custodial interrogation is required to recover the mobile phone and also to get medical evidence i.e. collection of blood etc..

7. In such circumstances, the applicant is not entitled for grant of any protection. Hence, the criminal application is rejected and disposed of accordingly.

JUDGE

!! BRW !!

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