

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

CRIMINAL APPLICATION (ABA) NO.520/2019

Sumit s/o Dayaram Shende

..VS..

State of Mah., thr. its Police Station Officer, Police Station Yashodhara
Nagar, Nagpur

.....
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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Mrs.Smita Singalkar, Counsel for the Applicant.
Shri M.J.Khan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : AUGUST 28, 2019.

1. Heard learned counsel Mrs.Smita Singalkar for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.
2. The applicant is apprehending his arrest in connection with Crime No.249/2019 registered with Yashodhara Police Station, District Nagpur for offences under Sections 376 and 506 of the Indian Penal Code.
3. Investigating papers show that initially report was lodged by victim at Bhopal (Madhya Pradesh) where offence was registered and, thereafter, it was transferred to the present police station.
4. Victim is a major woman and medical practitioner.
5. First Information Report shows that victim got

acquainted with the present applicant through Social Media and as per allegations the applicant proposed for marriage and, thereafter, established sexual relations with her.

6. It is case of the applicant that due to their acquaintances, victim asked the applicant to search a premises wherein she can establish a hospital and for that she handed over Rs.2,30,000/- to the applicant. The applicant could not find any tenanted premises for establishment of hospital and consequently he transferred Rs.40,000/- through RTGS in account of victim and Rs.1,90,000/- were paid in cash.

7. Learned counsel Mrs.Smita Singalkar for the applicant, invited my attention to document No.2 which is a legal Notice given by learned counsel for victim on 18.12.2018 from Madhya Pradesh wherein reference of the aforesaid transaction is noticed.

8. Learned Additional Public Prosecutor Shri M.J.Khan for the State, has opposed the present application for grant of anticipatory bail and submitted that custodial presence of the applicant is necessary for drawing samples.

9. On 1.8.2019, this Court (Coram : Manish Pitale, J.) granted *ad interim* bail in favour of the present applicant with condition that the applicant shall cooperate with investigation.

10. When this Court asked learned Additional Public Prosecutor as to reason for custodial presence of the applicant, learned Additional Public Prosecutor, after obtaining oral instructions from Investigating Officer, who is

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personally present in the Court, submitted that custodial presence of the applicant is necessary for drawing applicant's samples.

11. The Court put a query to learned Additional Public Prosecutor as to whether the applicant did cooperate with Investigating Officer or not. Upon that, on getting instructions from Investigating Officer, he replied that Investigating Officer did not call the applicant since Investigating Officer was busy in conducting investigation of other matters. Therefore, the Court directed learned Additional Public Prosecutor to point out noting of the case diary as to why Investigating Officer could not call the applicant for investigation purpose. However, learned Additional Public Prosecutor was required to cut sorry figure because Investigating Officer could not substantiate his statement from record.

12. Thus, the attempt on the part of Investigating Officer is to mislead the Court.

13. Hear, it would be appropriate to observe that though *interim* relief was granted on 1.8.2019, till today Investigating Officer did not give any instructions to learned Additional Public Prosecutor and when in the morning session the matter was called out, learned Additional Public Prosecutor requested for time. However, since it was noticed that the applicant was granted *interim* protection and the case is from the Nagpur itself, the Court expressed its opinion that it is a case wherein higher officials of the police

department should be asked to remain present in the Court thereafter only at 2:30 Investigating Officer remained present along with case diary. This shows attitude on the part of Investigating Officer to conduct investigation.

14. Looking to the facts involved in the case, I am of the view that the applicant needs to be protected. At the same time, eagerness of Investigating Officer to conduct investigation *qua* the present applicant can be achieved by giving directions to the applicant. Hence, I pass following order:

ORDER

(i) The criminal application is allowed.

(ii) Applicant-Sumit s/o Dayaram Shende, in the event of his arrest in connection with Crime No.249/2019 registered with Yashodhara Police Station, District Nagpur for offences under Sections 376 and 506 of the Indian Penal Code, he be released on bail on he executing a P.R.Bond in the sum of Rs.15,000/- with one solvent surety of the like amount.

(iii) The applicant is directed to attend the police station on 3.9.2019 and 4.9.2019 and shall be with Investigating Officer from 11:00 a.m. to 2:00 p.m.

(iv) During the said period, Investigating Officer should complete investigation *qua* the present applicant.

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(v) Registrar (J.) is directed to furnish copy of this order to the Commissioner of Police at Nagpur for taking suitable action.

(vi) With this, The criminal application stands disposed of accordingly.

JUDGE

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