

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

CRIMINAL APPLICATION (ABA) NO. 593 OF 2019

Ritesh s/o Subhash Warhekar .Vs. State of Maharashtra, PSO, P.S. Borgaon
Manju, Tq. and Dist. Akola and another.

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

Mrs. Preeti Rane, Advocate for applicant.
Mr. V.A. Thakare, A.P.P for non applicant-State.
Mrs. Shilpa Giratkar, Advocate for original complainant to
assist the A.P.P. (appointed)

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 14, 2019

Heard Mrs. Rane, learned counsel for the applicant,
Mr. Thakare, learned Additional Public Prosecutor for the
non applicant-State and Mrs. Giratkar, learned counsel for
the original complainant.

The applicant is apprehending his arrest in
connection with Crime No.244/2019 registered with Police
Station, Borgaon Manju, Taluka and District Akola for an
offence punishable under Sections 376 (2)(n) and 506 of the
Indian Penal Code.

The Crime No.244/2019 registered with Police
Station is registered on the basis of report lodged by
complainant.

There is no prelude to this crime, initially the
victim lodged a complaint with Police Station, MIDC, Akola.
From the affidavit filed by Mr. Shrikrushna Patil, PSI of
Police Station, MIDC, Akola would reveal that after receipt of

the report the applicant and his family members were called in the police station so also the victim was also called and compromise took place in between the parties resultantly the complainant withdrew her complaint in respect of the accusation made against the present applicant that he has committed rape on her on giving promise of marriage. Accordingly, as per affidavit of PSI-Patil the station diary entry was taken. Before this Court also the counsel for the applicant did not dispute the said factual position. According to the learned counsel for the complainant though it was agreed that the applicant will marry with the victim as agreed in the police station he did not married with her and therefore she lodged the second report.

From the first information report it is clear that the victim is mature and she is working as System Support Engineer in Infotech Company at Pen Nagar Parishad, District Raigad. The applicant is residing at Murtizapur. Both the victim and applicant are residing far away from each other. On scrutiny of the report *prima facie* shows that physical relation with each other was with consent. The issue as per the victim there was promise on the part of the applicant for marriage and thereafter there took physical relation which is denied by the applicant. Therefore, that will have to be decided during the course of the trial, presently the Court has to decide whether there is any occasion for giving physical custody of the present applicant to the police authority.

It is to be observed here that on 28.08.2019 this Court granted ad interim protection in favour of the applicant on a condition that he shall attend police station from 01.09.2019 to 09.09.2019 and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m. The learned counsel for the applicant submits that he has attended the police station and joined the investigation. The said factual aspect is not disputed by the learned Additional Public Prosecutor for the non applicant- State on basis of instruction received to him from the investigating officer.

After perusal of the report, replies and after hearing the learned counsel for the parties, I am of the view that custodial presence of the applicant is not at all necessary. Consequently, I pass following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.244/2019 registered with Police Station, Borgaon Manju, Taluka and District Akola for an offence punishable under Sections 376 (2)(n) and 506 of the Indian Penal Code, applicant – Ritesh s/o Subhash Warhekar, be released on bail on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) Applicant is directed to attend Police Station, Borgaon Manju, Taluka and District Akola once a week i.e. on every Sunday and shall be with the investigating officer from 03:00 p.m. to 05:00 p.m. till filing of the charge-sheet.

(iv) The observations made in this order by this Court are only for deciding this application. The learned Judge before whom trial will be conducted shall not get himself influenced by any observation made in this order.

The application is disposed of.

JUDGE

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