

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

CRIMINAL APPLICATION (BA) NO. 1005 OF 2019

Nitin s/o Natthu Malewar .Vs. State of Maharashtra,through P.S.O, P.S.
Tirora, Tah. Tirora, Dist. Gondia.

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

Court's or Judge's orders.

Mr. R.R. Prajapati, Advocate for applicant.
Mr. N.R. Rode, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 19, 2019

Heard Mr. Prajapati, learned counsel for the applicant and Mr. Rode, learned Additional Public Prosecutor for non applicant-State.

The applicant is arrested in connection with Crime No.190/2019 registered with Police Station, Tirora, Tah. Tirora, Dist. Gondia for an offence punishable under Sections 376(2) (n), 417 and 506 of the Indian Penal Code.

The report is lodged by victim herself at Police Station, Tirora on 02.06.2019. The report itself would show that the victim is aged 20 years. According to the report, on 14.11.2018, when the victim was grazing her she-goats near one *nala*, somebody pulled her and at that time it is noticed that he was applicant. Thereafter, against her wish he has committed sexual intercourse with her.

The reply would show that the victim delivered a baby boy on 10.08.2019. As per the report, on 07.12.2018 the victim made a phone call to the applicant that due to the

sexual intercourse she is now pregnant. At that time according to the report, the applicant promised to marry with her and also established sexual relations however subsequently he turned around.

From the reply as well as report, it is clear that victim who is a major girl, possibility of consent to sexual intercourse is not ruled out completely.

Since investigation is over and charge-sheet is already filed and *prima facie* there is room to believe that victim was a consenting party, in my view, jail presence of the applicant need not be continued. Consequently, I pass following order :

ORDER

- (i) The application is allowed.
- (ii) Applicant- Nitin s/o Natthu Malewar, be released in connection with Crime No.190/2019 registered with Police Station, Tirora, Tah. Tirora, Dist. Gondia for an offence punishable under Sections 376(2) (n), 417 and 506 of the Indian Penal Code, on he executing PR. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend Police Station, Tirora, Tah. Tirora, Dist. Gondia twice a month i.e. on third Sunday and fourth Tuesday of every month and shall be with the investigating officer from 11:00 a.m. to 02:00 p.m., till culmination of the trial.
- (iv) The observations made in this order are *prima facie* in nature and they are made only for deciding present

application. The learned Judge of the Court below shall not get himself influenced by the observations made in this order.

The application is disposed of.

JUDGE

srwagh