

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

CRIMINAL APPLICATION (ABA) NO.836 OF 2019

Sachin s/o Baliram Nandanwar .Vs. State of Maharashtra,through P.S.O,
P.S. Bramhpuri, Dist. Chandrapur.

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

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 17, 2019

Heard Mr. Dawda, learned counsel for applicant and Mr. Rode, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of prosecuting agency.

2. This is an application for pre-arrest bail. After detailed hearing of the applicant when the Court was about to dismiss the application, learned counsel for the applicant submits that he wishes to withdraw the application. Normally, Courts grant permission for withdrawal of the application. However, looking to the seriousness of the matter, permission is refused and the application is decided on its own merits.

3. It is the submission of the learned counsel for the applicant that victim is aged about 39 years and there was

consensual sex in between the applicant and the victim. He, therefore, submits that the applicant cannot be held guilty for committing an offence punishable under Section 376 of the Indian Penal Code (IPC).

4. It is also his submission that from the reply it is clear that the victim was knowing that the applicant has made signatures on the medical papers when she was taken to the hospital and at that time she did not object and therefore the applicant cannot be even held guilty for the offence punishable under Section 313 of the IPC.

5. First information report is dated 07.11.2019, from the allegations made in the first information report, *prima facie*, it is clear that sex between the applicant and the victim was consensual.

6. It appears from the report that due to consensual sex the victim got pregnant. When this fact was disclosed by victim to the applicant, the applicant brought one tablet and asked the victim to take it. Not only that, the said was repeated on the second day also. Resultantly, there was unbearable pain to the victim. Due to unbearable pain and since there was discharge of blood, the victim called the applicant to her house. However, that time, as per first information statement, the applicant disclosed to the victim that the pills which were provided by him were for the termination of pregnancy and left her house. According to

the first information statement, at 03:00 O'clock in the night victim aborted. Though she made repeated phone calls, the applicant did not respond to the said phone calls.

7. According to the first information report, on the next day the victim informed the fact of abortion to one Manish Dhone, applicant's friend, and asked him that he should intimate to the applicant about the said fact. Thereafter, as per first information statement, applicant and his friend came at her house and took the foetus with them. First information report states that since she cut the umbilical cord, she was having tremendous pains therefore applicant took the victim in his car in the hospital of Dr. Nitin Kolwate at Gadchiroli where the doctor provided medicine to the victim.

8. Having consensual sex by the victim is one thing and the applicant taking steps to terminate her pregnancy illegally is not only another aspect but a very serious one. The foetus can be aborted only under the watchful eyes of a medical practitioner that too when it is permissible. Surely a person, who is not trained in the medical science or a quack, is not permitted to terminate the pregnancy thereby engendering the life of the pregnant woman. In the present case, the applicant on his own, has brought some medicine and asked the victim to take the same. Under his influence, she took the said medicine which has resulted into miscarriage. Not only that, thereafter the applicant took the

foetus and has destroyed same in order to screen himself from legal punishment.

9. It is also stated in the first information report that the applicant was in habit of videographing of their consensual sex and used to put the victim under threat that if she is not permitting him to perform sex then he will make it public. It is an another angle which may be considered at the time of trial.

10. In the backdrop of the discussion made above, I am of the opinion that the applicant has committed a very serious offence and for its proper investigation, his custodial presence is absolutely necessary since it is only within special knowledge of that applicant where he has buried or destroyed the foetus.

11. Looking to the aforesaid, there is no hesitation my mind to reject the application.

Consequently, the application is rejected.

JUDGE

srwagh