

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

CRIMINAL APPLICATION (ABA) NO.829 OF 2019

Abdul Aziz Shaikh Habib .Vs. State of Maharashtra, through PSO, P.S.
Samraspura, Tq. Achalpur, Dist. Amravati.

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

Court's or Judge's orders.

Mr. C.A. Babrekar, Advocate for applicant.
Mr. V.A. Thakare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 07,2020.

Heard Mr. Babrekar, learned counsel for the applicant and Mr. Thakare, learned Additional Public Prosecutor for non applicant-State. Also, perused the reply filed on behalf of prosecution.

Applicant is apprehending his arrest in connection with Crime No.126/2019 registered with Police Station, Samraspura, Tq. Achalpur, Dist. Amravati for an offence punishable under Sections 376, 354, 506, 294 read with Section 34 of the Indian Penal Code.

Investigating officer is claiming custodial presence of the applicant to find out the truth.

Applicant is brother-in-law of the victim. Victim's husband died on 05.04.2019. According to the victim, even after the death of her husband she used to reside along with her mother-in-law, who is co-accused in this crime and with the applicant. According to the victim's version in First Information Report (FIR), the applicant has established

sexual relations with her on the point of dagger on 26.07.2019 and 02.08.2019. It is also stated in the FIR that her mother-in-law used to ask the victim to allow the present applicant to have sexual relations with her. According to the victim's statement, in view of the personal law governing victim and the applicant, it was not expected from the victim to step outside of her house for a period of four months from the death of her husband.

It is an admitted position that on 05.04.2019 victim's husband died. So as per personal law of the victim it was not expected from her to step outside her house till August-2019. According to FIR, the instances of forcible sexual intercourse took place on 26.07.2019 and 02.08.2019. The period of four months from death of victim's husband was already expired. In this background it is to be noted that FIR against the applicant is lodged on 02.11.2019. Therefore, *prima facie*, there is inordinate delay in lodging the FIR which is not explained properly at least at this stage by prosecution. However, it will be open for the prosecution to explain the same during the course of trial.

According to learned Additional Public Prosecutor even wife of the applicant has lodged a report against him and for that a crime is registered against him at Police Station, Paratwada vide Crime No. 416/2019 for an offence punishable under Sections 354, 354B, 498A read with Section 34 of the Indian Penal Code.

Learned counsel for the applicant has invited my attention on the compilation of this application which clearly shows that there is long standing dispute between the applicant and his wife. Many a times matter reached to this Court and the appropriate orders were passed. In view of this I am not attaching much importance to the FIR lodged by wife of the applicant for consideration of this application for pre-arrest bail.

As observed above, there is inordinate delay in lodging the report. Further, there is nothing on record to show that there were any circumstances or any acts done by the applicant to prohibit the victim to lodge the report against him by stepping outside the house.

Even from the reply it is clear that in view of the interim protection granted by this Court, the applicant has attended the police station and not only that, his medical examination has already been conducted. In that view of the matter, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.126/2019 registered with Police Station, Samraspura, Tq. Achalpur, Dist. Amravati for an offence punishable under Sections 376, 354, 506, 294 read with Section 34 of the Indian Penal Code, applicant – Abdul Aziz Shaikh Habib be released on bail on he executing P.R. bond in the sum of ₹10,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Samraspura, Tq. Achalpur, Dist. Amravati twice in a week i.e. on every Thursday and Saturday and shall be with the investigating officer from 02:00 p.m. to 05:00 p.m.

The application is disposed of.

JUDGE

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