

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2405 OF 2023

Shashikant s/o Murlidhar Atkore ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. D.M. Shinde, Advocate for applicant
Mrs. V.N. Patil Jadhav, A.P.P. for respondent No.1.
Mr. Niraj Chudiwal, Advocate for respondent No.2.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 20th OCTOBER, 2023

ORDER (PER SANJAY A. DESHMUKH, J.) :

This is an application for quashment of the F.I.R. No.33/2023, registered with Ardhapur Police Station, District Nanded for the offence punishable under Section 376(1), 376(2)(n), 417 of the Indian Penal Code. The informant has averred in her report that she was earlier married and begotten one girl child. Since 2019 she was residing separately. The applicant was residing in her village. He used to come to her frequently. The love affairs were developed. The applicant assured to perform marriage with her. On that assurance, the informant allowed sexual

relationship with him. In the year 2021, both of them executed a Compromise Deed of Live-In-Relationship. They also agreed to perform marriage. Thereafter the sister of informant became pregnant and delivered a baby girl. That time the applicant refused to maintain her. Therefore, she lodged the report that she has been cheated and raped by the applicant.

2. Learned counsel for the applicant submitted that, this is a case of consensual sex and it cannot be termed as rape. He therefore prayed to quash the F.I.R.

3. Learned A.P.P. for respondent No.1 – State and learned counsel for respondent No.2 strongly opposed the application by contending that the sister of the informant is sexually abused by the applicant. She delivered a baby girl and the applicant is not ready to maintain her. All these facts prima facie establish that the applicant committed rape of the informant. They lastly prayed to reject the application.

4. The report and the agreement of staying in relationship itself establishes that it was a consensual sex between the applicant and the informant, which prima facie cannot establish the ingredients of rape. Therefore, in such fact situation, the applicant cannot be compelled to face the trial. It would be abuse of process of law. The application, therefore, deserves to be allowed and the

same is allowed in terms of prayer clause (B), subject to the deposit of Rs.10,000/- (Rupees ten thousand) by the applicants in this Court within a period of two weeks from today towards fees of learned counsel appointed for respondent No.2. On depositing the amount of Rs.10,000/-, same be paid to learned counsel appointed for respondent No.2.

5. List the matter on 8th November 2023 for compliance of this order.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-