

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETN. No. 24 of 2022

Shri Assurance Raikhan, aged about 56 years, S/o R.N.
Joy, a resident of DDK, Imphal Quarter No. D1, P.O. &
P.S. Porompat, Imphal East District, Manipur.

.... Petitioner

- Versus -

1. The Officer-in-Charge, WPS-UKL, Ukhrul District, Manipur.
2. Panchunwon Kashak, aged about 28 years, W/o Yaruihor Hungyo, a resident of Nagaram Block D, Stadium Road, P.O. Lamlong, P.S. Heingang, Imphal East District, Manipur.

.... Respondents

B E F O R E

HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. L. Sevananda, Advocate
For the respondents: Mr. Samarjit Hawaibam, Sr. Advocate
Ms. H. Bisheshwari, Advocate

Date of hearing : 08.11.2024
Date of judgment &
order : **27.12.2024**

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. L. Sevananda, learned counsel appearing for the petitioner, Mr. Samarjit Hawaibam, learned senior counsel appearing for the State and Ms. H. Bisheshwari, learned counsel appearing for the respondent No. 2.

[2] Brief facts of the present case are that the private respondent (respondent No. 2) made OE/written report on 12.07.2019 to the Officer-in-Charge, Women Police Station, Ukhrul alleging that the present petitioner raped her on 28.10.2017 in Ngashan Inn (Lodge) located at Hamleikhong, Ukhrul Head Quarter during a trip of film shooting wherein, the private respondent acted as leading female role and the petitioner was the producer and director of the film. On the day of committing the incident, the petitioner booked rooms at one, Tip Top Hotel located near Viewland Baptist Church for all crew members except the private respondent and the cameraman at Ngashan Inn.

The written report/OE reveals that despite resistances, the petitioner raped her by force. However, no one came to rescue her even though other people stayed in other room where she heard their noises. She further alleged that the petitioner had been committing such acts of rape since the year 2012 when she started to work with the petitioner; at the time she was 18 years old.

[3] On the basis of the written report, the officer-in-charge, /respondent No. 1 registered an FIR against the petitioner being FIR No. 1(7) 19 WPS/UKL U/s 376/506 IPC dated 12.07.2019 and he was arrested by the Investigating Officer (I.O.) of the case. After producing the petitioner before the Ld. Chief Judicial Magistrate, Ukhru on 19.07.2019 for further remand, he moved a bail application being CRIL. (B) No. 9 of 2019 objecting the remand prayer of the I.O. of the case and the Ld. CJM, Ukhru allowed the petitioner and enlarged on bail on 19.07.2019 (**Annexure – A/3**). Operative portion of the said order is extracted herein below:

"Heard the submission of the I.O. and counsel appearing for the accused person. Perused the case diary and the materials placed before the court including statement of the complainant, accused person and the cameraman recorded by the IO, and also the medical report of the complainant and the accused person as well. Nothing much could be revealed by the medical examination of the accused person and the complainant since the alleged offence of rape of the complainant is stated to have occurred between the year 2012 to 2017, and no wearing, apparel clothing of the victim could also be seized. So far the investigation did not reveal or unearth any material witness evidence who has knowledge about the rape incident alleged by the complainant, including the cameraman who accompanied the complainant and accused person on their shooting trips during the years 2012-2017. An audio recording of phone conversation between the complainant and cameraman and accused person has been provided by the complainant, authenticity of which is also required to be verified. Considering all the above facts and circumstances, and also considering the medical condition of accused person and the fact that he is an employee in DDK Imphal, there does not appear any likelihood of the accused person absconding, hence, accused person is allowed to go on bail on his furnishing a bail and surety bond for an amount of Rs. 5,000/- (fifty thousand) each to the satisfaction of the court. In addition, the accused person shall abide by the following:

1. *The accused person shall not leave the state of Manipur without the prior permission of the court.*
2. *The accused person, himself his family or through friends and acquaintances shall not contact the complainant, or any material witness, and or intimidate or threaten them or try to temper or hamper investigation in any manner."*

[4] The petitioner raised the following points for consideration in terms of both law and facts in the present case:

(a) Whether the allegations made in the written report or complaint, even if taken at their face value and accepted in their entirety does prima facie constitute any offence of rape and criminal intimidation against the petitioner.

(b) Whether the contents of the written report/OE as to no person staying at other room of Ngashan Inn (place of occurrence) on 28.10.2017 came to the rescue of the private respondent when raised an alarm of protest against the petitioner while raping her could justify the allegations of rape.

(c) Whether allegations alleged in the written report/OE and the evidence collected in support of the offences charged against the petitioner make out a case of the alleged offences.

(d) Whether the allegations of the private respondent and the charges leveled against the Petitioner is maliciously instituted with an ulterior motive of vengeance

and with a view to spite petitioner due to private and personal grudge.

(e) Whether the failure to lodge the report spontaneously by the private respondent in the year 2012 when the first incident of rape occurred as alleged in the written report/OE indicates consensual sexual intercourse.

(f) Whether continuing sexual intercourse subsequent to the first sexual encounter of the Private respondent with the petitioner till 2017 appear to have been act of mutual consent and not of forcible sex without consent and against her will.

(g) Whether the lodging of the written report/OE by the private respondent only in the year 2019 and that of accruing much delay indicate an afterthought and instigated report.

[5] The learned counsel appearing for the petitioner submits that at the time of recording of the statement of the private respondent by the I.O. of the case, no leading evidence to prima facie incriminate the petitioner with the charged sections in the FIR could be adduced and as such, the petitioner needs to be absolved from the offences. On the facts and circumstances aforementioned, the investigation was proceeded on the following grounds:

(a) The OE/written report of the private respondent prima facie disclosed contradictory state of facts and the same is a vague and appear to be a spiteful and vengeful report for the best reason known to the Private respondent;

(b) The negative language of Article 21 of the constitution and the use of the word "deprive" is not only imposed upon the Respondent No.1 but also the negative duty not to interfere with the life or liberty of an individual without the sanction of law but also imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity.

(c) The bail order of the Ld. Chief Judicial Magistrate, Ukhurul granted in favour of the petitioner show that nothing much could be revealed by the medical examination of the accused and the complainant since the alleged offence of rape of the complainant is stated to have occurred from 2012 to 2017.

(d) No wearing apparel/ clothing of the victim could be seized and as such so far the investigation did not reveal or unearth any material witness evidence who has the knowledge about the rape incident alleged by the Complainant, including the cameraman who

accompanied the complainant and accused person on their shooting trips during the years 2012-2017.

(e) The charges leveled against the petitioner holds no ground inasmuch as the very reporting of the case by the private respondent to the respondent No.1 was done after a lapse of 7 years corresponding to the first alleged incident of rape which occurred in the year 2012 and secondly after a lapse of 3 years corresponding to last episode of rape being in the year of 2017.

(f) The petitioner is the most probable outcome is likely to be absolved from the present criminal case necessitating the quashing of the FIR case registered against them for want of prima facie evidence for prosecution.

[6] In view of the above facts and circumstances, the present petition has been filed under Section 482 of Cr.P.C., 1973 on behalf of Shri Assurance Raikhan with the following prayer:

- “(i) To admit this petition and issue Rule Nisi;
- (ii) To pass an order therein to quash/set aside the FIR case under FIR No. 1(7) 2019 WPS/UKL U/s 376/506 IPC registered against the petitioner as the same is embedded with spiteful and personal

vengeance which is quite apparent on the face of the OE/Written report;

- (iii) To pass any other/further order/writ/directions, which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

In the Interim

To issue a direction thereby to stay the proceedings of investigation as no material evidence and any other substantiating witnesses could be led or examined since the initiation of investigation in the year 2019 and hence failure to charge-sheet the petitioner."

[7] Mr. Samarjit Hawaibam, learned senior counsel appearing for the officer-in-charge/respondent No. 1 submits that he has filed affidavit-in-opposition wherein it has been mentioned that the petitioner raped the private respondent in the hotel room of Ngashan Inn by force pretending to be dropped at her parental home at Harkui Kathe Tang, Ukhrul. **She was continually molested, raped and threatened to murder by the petitioner since the year 2012 when she began to work with him and as such, she could not make a formal complaint to any authority out of fear and shame and was waiting for a moment to reveal her nightmarish story to someone who can help her to find justice.** Therefore, the FIR was registered and investigated into.

The process for authentication of the audio recording of phone conversation between the complainant/victim and the **cameraman and petitioner/accused from the recognized center outside the State is underway**. Once the audio proof is received, the supplementary charge sheet will be filed.

[8] After committing the incident of first rape of her, the petitioner took extra care of her and also threatened her not to report to anyone. Her medical examination report showed the sign of defloration of vagina. The voice recorded conversation of the petitioner and the victim produced by the victim herself supports the allegation of rape.

[9] During the investigation, the strong evidences found in support of the victim's statement of allegation against the petitioner are as follows:

- (i) Medical examination report is indicative of defloration in the vagina of the victim.
- (ii) Two cameramen, who accompanied the petitioner and the victim on various trips to hill districts, witnessed that the petitioner used to enter the hotel room of the victim on many occasions. There was also an instance of attempting her to be raped in the month of February, 2018 at the same hotel.

(iii) In the month of February, 2018, younger brother of the victim staying with her in the same room of Ngashan Inn witnessed the petitioner trying to rape her sister in his presence.

[10] Moreover, non-reporting of the incident immediately after the first incident of rape was due to fear and criminal intimidation by the petitioner against the victim. Under such circumstances, the victim needs to muster courage to report the matter to the law enforcement department or any other trusted person. Therefore, the respondent No. 1 denied that no evidence to prima facie in criminal the petitioner caused adduced. On the basis of the findings of the I.O. of the case, the charge sheet has been filed against the petitioner for trial proceeding.

[11] Further, the learned senior counsel appearing for the respondent No. 1 submits that non-reporting of the matter to the concerned authority on time is no reason enough to dismiss the allegation. It only leads to loss of time and evidence to gather for proving the case for the victim. The I.O. of the case gathered enough evidences to file charge sheet for trial proceeding in the Court of law.

[12] Ms. H. Bisheshwori, learned counsel appearing for the respondent No. 2 submits that she has filed affidavit-in-opposition wherein it has been mentioned that the entire FIR does not constitute any prima facie of rape and criminal intimidation against the petitioner

are all baseless. The charge sheet has already been submitted by the OC, WPS/UKL, and as such, the case could be decided only after conclusion of sessions trial. Since the case at hand is premature, the same is liable to be dismissed on devoid of merit.

[13] Mr. L. Sevananda, learned counsel appearing for the petitioner submits that he has also filed rejoinder affidavit denying the averments made by the respondents No. 1 & 2. Since the sexual encounter between the petitioner and the respondent No. 2 was consensual, she did not made any formal complaint to the authority i.e. from the first incident of rape happened in the year 2012 till the last alleged event of rape on 28.10.2017. She made a police report with allegation of rape against the petitioner on 12.07.2019 after a gap of 2 years, 3 months and 16 days that the said report has been made with an afterthought and therefore, the same shows the absurdity and inherent improbability of being raped by the petitioner except a maligning allegation against the repute and good image of the petitioner.

[14] As regards the phone conversation between the petitioner and the victim, the said phone call has been subjectively with malafide intention being made by her in order to construct evidence to framer the petitioner in a false case of rape and the said conversation cannot be adduced against the petitioner to implicate him in the said FIR case by virtue of being barred by Article 20(3) of the Constitution of India.

[15] The petitioner denied the allegation that the petitioner tried to rape the respondent No. 2 in presence of her younger brother. It is also denied the allegation that non-reporting of the incident to the concerned authority is due to fear and criminal intimidation and also of the fear of being ostracized by the society and losing of honor and dignity of the victim and her family members. The averments made in the charge sheet are vague and improper as no mention of the charge sheet number is cited along with its date of submission and further no notice of summons is issued so far to the petitioner to stand the trial from the concerned Trial Court.

[16] Mr. Samarjit Hawaibam, learned senior counsel appearing for the respondent No. 1 replied on the following decisions of the Hon'ble Supreme Court:

Satyapal -vs- State of Haryana reported in (2009) 6 SCC 635 :"

"21. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the first information report in a case of this nature is a normal phenomenon. Both the courts below apart from relying on a part of the testimony of the prosecutrix found the evidence of PW 5 to be absolutely reliable. The medical evidence itself being a part of the evidence is required to be appreciated in the context of ocular evidence and other circumstances surrounding thereto. There was some time gap between the occurrence and the examination of the witnesses. Some lapses of memory on the part of the child witness, therefore, is possible."

State of Punjab -vs- Gurmit Singh &Anr. reported in (1996) 2 SCC 384 :

"8. In our opinion, there was no delay in the lodging of the FIR either and

if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

Karnel Singh -vs- State of M.P. reported in (1995) 5

SCC 518 :

"7.
..... In India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false."

State of Himachal Pradesh -vs- Prem Singh reported in (2009) 1 SCC 420 :

"6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction."

Neeharika Infrastructure Private Limited -vs- State of Maharashtra &Ors. reported in (2021) 19 SCC 401:

"10.1. The first case on the point which is required to be noticed is the decision of this Court in R.P. Kapur. While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is in parimateria with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the

other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the abovestated rule, which are as under: (AIR p. 866)

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained." (emphasis supplied)

10.2. In Kurukshetra University, this Court observed and held that inherent powers under Section 482 CrPC do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information

report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 CrPC. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into b the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

10.3. Then comes the celebrated decision of this Court in Bhajan Lal¹². In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable f offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding 9 against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India and in g what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 CrPC and/ or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the

reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its own whims or caprice.

33.12. The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur and Bhajan Lal, has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/ material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 f CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred 9 to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

[17] Admitted positions of facts are that;

- i) Both the petitioner and respondent No. 2 have known each other since many years and work together for the filming of Tangkhul films wherein the petitioner was the producer and director of the film and respondent No. 2(private respondent) was acting as leading female role in the film.
- ii) As per the allegation made in the FIR the petitioner committed the first rape to the respondent no. 2 since the year 2012 when the respondent was 18 years old and alleged offence was continuing till the last rape committed 28.10.2017. Thereafter, the respondent no. 2 lodged FIR on 12.07.2019.
- iii) The accused was arrested and subsequently an application for bail was failed and released on bail by the learned CJM, Ukhrul on 19.07.2019.

[18] The learned counsel for the petitioner submitted that in the bail order of the learned CJM, Ukhrul while passing the order observed that nothing much could be revealed by the medical examination of the victim.

There are series of Hon'ble Supreme Court's observation regarding the observation made by the Courts' in passing bail order that that observation made in the bail order shouldn't come in to the way of

trial of the case which is to be taken place in the later stage of trial. As such the ground taken herein by the learned counsel for the petitioner cannot be accepted.

[19] The learned counsel for the petitioner further submits that the complaint made by respondent No. 2 against the petitioner holds no good ground inasmuch as the reporting of the case by the private respondent against the petitioner was done after a lapse of 7 years corresponding to the first alleged incident which occurred in the year 2012 as such the most probable outcome to be absolved from the criminal case as such request for quashing the FIR.

In this regard, this Court relied upon the observations of the Hon'ble Supreme Court's judgments and observations made therein are reproduced herein below:

Satyapal -vs- State of Haryana reported in (2009) 6 SCC 635 :"

"21. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the first information report in a case of this nature is a normal phenomenon. Both the courts below apart from relying on a part of the testimony of the prosecutrix found the evidence of PW 5 to be absolutely reliable. The medical evidence itself being a part of the evidence is required to be appreciated in the context of ocular evidence and other circumstances surrounding thereto. There was some time gap between the occurrence and the examination of the witnesses. Some lapses of memory on the part of the child witness, therefore, is possible."

State of Punjab -vs- Gurmit Singh &Anr. reported in (1996) 2 SCC 384 :

"8. In our opinion, there was no delay in the lodging of the FIR either and

if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

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"6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction."

Neeharika Infrastructure Private Limited -vs- State of Maharashtra &Ors. reported in (2021) 19 SCC 401:

"10.1. The first case on the point which is required to be noticed is the decision of this Court in R.P. Kapur. While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is in parimateria with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the

other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the abovestated rule, which are as under: (AIR p. 866)

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."
(emphasis supplied)

10.2. In Kurukshetra University, this Court observed and held that inherent powers under Section 482 CrPC do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly

with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 CrPC. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

10.3. Then comes the celebrated decision of this Court in Bhajan Lal¹². In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India and in g what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 CrPC and/ or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the

reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its own whims or caprice.

33.12. The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur and Bhajan Lal, has the jurisdiction to quash the FIR/complaint.

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/ material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 f CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred 9 to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

[20] In addition to the above observation of the Hon'ble Supreme Court, the prosecution in the charge sheet explained elaborately regarding the late registration of the FIR by the respondent No. 2. For the sake of brevity and convenient sake, some of the contents of the charge sheet for this matter is extracted herein below;

".....for the first time at Golden Hotel, Mao (Senapati) in the later part of the year, 2012 or early part of the year 2013 (specific date year could not be made out as the victim could not provide it besides the hotel register for the tentative year could not be recovered). Though she knew the gravity of the crime committed against her by the accused person she could not muster courage to report the matter to anyone. She was scared of how the society would consider and treat her if she happened to expose herself as rape victim. Since then, the accused continued to rape her in every available opportunity while visiting hill districts of Manipur with the victim. The accused had raped her for a numerous times between the year 2012, 2013 to 2017. As per the statement of the victim, the last act of rape was committed on 28.10.2017 at Ngashan Inn (Hotel), Ukhrul. After which, the accused person could not rape her as he had erection problem with his penis and subsequently remained sick for almost a year. After returning to work in 2019, the accused person returned to his old self and continued to sexually molested her. He had also threatened her by saying that she had nowhere to seek support for her justice as the police, lawyers and other civil organization leaders, whomever she went, would be his friends. It would be like digging her own grave. As the accused as an influential person, she felt that his threatening words would become true. As such, the accused instilled fear and insecurity for justice in the mind of the victim. So, she buried her pain and suffering deep within her heart without reporting to anybody for quite a long period of time. All those time, the accused forbade her to make friends with others even with her co-workers. Gradually, she was alienated from the society and thus began to feel herself hopeless without any positive prospect in her life. At last, she met a reliable boyfriend whom she shared the dark side of her life. Together with her boyfriend, she spoke about her whole hidden story to her family members. And thus, she lodged an FIR case against the accused person on 12.07.2019 at Women Police Station, Ukhrul. Besides, from the statements of the victim recorded under sections 161 Cr.P.C and 164 Cr.P.C, it is a proven fact that the accused person had raped the victim numerous times in between the years 2012, 2013 to 2017. The accused also continued sexually molesting the victim till the early part of the

year 2019 while she was working under the accused person at Doordarshan Kendra, Imphal. The accused had also threatened the victim that she should not report the matter to anybody as it would only ruin her reputation. The voice conversation between the accused person and the victim which was converted into CD and produced by the victim as also found to be strongly supportive to the rape allegation made by the complainant against the accused person. The victim had prepared the voice recordings from March, 2019 so as to collect and preserved the evidences. The CDR collected from the mobile numbers of the accused person and the victim also corroborated with the voice records produced by the victim. In the voice records, the accused.....The FSL, Pangei could not yield any positive result supportive to the crime as the last incident of rape had happened about two years back from the date of conducting Medical examinations. However, signs of defloration in the vagina of the victim could be observed and potency of the accused person had been proved beyond doubt. So, from the above facts and circumstances arrived through investigation, sections 376, 506 and 354-A of IPC are well proved. Thus, prima facie evidence against the accused person are well established to charge him U/S 376/506/354-A IPC."

[21] On careful perusal of the Hon'ble Supreme Court's judgments as extracted above and considering the facts and circumstances set out by the parties in the present case and relying upon the observations made by the Hon'ble Supreme Court and its guidelines and formula as set out in ***State of Haryana & Ors. V. Bhajan Lal (supra)***, this Court is of the view that the prosecution story as set out in the charge sheet fulfilled and well explained with reason about the late lodging of FIR and explanation made therein is satisfactory and accepted.

[22] Accordingly, this Court observed that there was no delay in the lodging of FIR either and if at all there was some delay, the same has been properly explained by the prosecution but in the facts and circumstances of the instant case was also natural this Court cannot

overruled the fact in sexual offences delay in lodging of FIR can be variety of reasons particularly the reluctant of the prosecutrix or her family members to go to the police and compliant about the incident which concerns the reputation of the prosecutrix and honor of her family it is only after giving it cool thought that a complaint of sexual offence is generally lodged.

[23] The learned counsel for the petitioner further submits that the sexual encounter between the petitioner and respondent No. 2 are consensual one as such she did not complaint to the police and filed on the charges of being by the petitioner only after 7 years of the first occurrence just to maligning allegation against the reput and image of the petitioner.

This Court is of the considered view that the submission of the learned counsel for the petitioner shows the admission on the part of the petitioner that the petitioner had sexual relationship with the respondent No. 2, thereby supporting the claimed of the respondent No. 2 that she has have sexual relationship with the petitioner now since the petitioner admitted to have sexual relationship with the respondent No. 2 the only question left now is as whether the sexual relationship was consensual one or raped. Since, the prosecutions have submitted the charge sheet the sexual relationship with the petitioner and the respondent No. 2 was raped or consensual only will be known only after the conclusion of the trial. As regard the phone calls as

alleged by the respondent No. 2 which was alleged to be between the respondent No. 2 and petitioner the learned counsel for the petitioner submits that the call has been subjectively with malafide intention being made by the respondent No.2 to the petitioner to construct evidence to frame the petitioner in a false case of rape as such barred by Article 20(3) of the Constitution of India.

[24] The prosecution have already submitted charge sheet for trial citing all these facts in the charge sheet the question of subjectivity and malafide will not be aroused as of now it will be only after the trial, the real picture of the facts of the case will emerged. Moreover, as submitted above by the learned counsel for the respondent no. 2 the process for authentication of the audio recording of phone conversation between the complainant/victim and the cameraman and petitioner/accused from the recognized center outside the State is underway. Once the audio proof is received, the supplementary charge sheet will be filed. Considering these facts and circumstances the submission made above by the learned counsel for the petitioner is premature at this stage.

[25] The decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in support of his case:

Joseph Salvaraj A. -v- State of Gujarat &Ors.
reported in (2011) 7 SCC 59:

"14. In the instant case, we have to first examine whether any of the ingredients under Section 406, 420 or 506 Part I IPC have been made out to enable the Court to take cognizance thereof against the appellant or not. Bare perusal of the FIR

lodged by the complainant, would indicate that he had got in touch with the appellant so as to extend the benefit of the appellant's channel "GOD TV" to his other brethren residing at Ahmedabad. For the said purposes, he had met the owner of Siti Cable, Bapi Nagar in Ahmedabad and negotiated a settlement for a sum of Rs 10 lakhs on behalf of the appellant's b company as the fee to be paid to Siti Cable by the appellant for telecast of channel "GOD TV" in Ahmedabad. Further grievance of the complainant was that despite the telecast of "GOD TV", the appellant, as promised, failed to pay a sum of Rs 10 lakhs to the owners of Siti Cables. This is what has been mentioned in a nutshell in the complainant's FIR. We have grave doubt, in our mind whether on such averments and allegations, even a prima facie case of the aforesaid offences could be made out against the present appellant.

15. Criminal breach of trust is defined under Section 405 IPC and Section 406 thereof deals with punishment to be awarded to the accused, if found guilty for commission of the said offence i.e. with imprisonment for a term which may extend to three years, or with fine, or with both. Section 420 IPC deals with cheating and dishonestly inducing delivery of property. Cheating has been defined under Section 415 IPC to constitute an offence Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning, which is sine qua non to hold the accused guilty for commission of the said offence. Categorical and microscopic at an examination of the FIR certainly does not reflect any such dishonest intention ab initio on the part of the appellant. Section 506 IPC deals with punishment for criminal intimidation. Criminal intimidation, insult and annoyance have been defined in Section 503 IPC but the FIR lodged by the complainant does not show or reflect that any such threat to cause injury to person or of property was ever given by the appellant to the complainant.

16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR. charge-sheet, documents, etc. or not.

17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a

criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v. State of U.P.1, relevant part thereof is reproduced herein below: (SCC p. 505, para 27).

"27.... A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong. The courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

18. In fact, all these questions have been elaborately discussed by this Court in the most of the quoted judgment in State of Haryana v. Bhajan Lal where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused, is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the court, at least after having gone through the FIR, which discloses only a civil dispute."

The observations herein above by the Hon'ble Supreme Court is not applicable in the facts and circumstances of the instant case as in the instant case, the prosecution has made out a prima facie case in the FIR and charge sheet for going into trial. Considering the facts and circumstances set out in the charge sheet the prosecution made out the cardinal principles which have been carved out in the reference case of State of Haryana & Ors Vs Bhajan Lal & Ors. I am of the opinion that the present principle falls in the category where cognizance of the offence could have been taken by the Court.

State of Haryana &Ors. -vs- Bhajan Lal &Ors.
reported in 1992 Supp (1) SCC 335:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we

give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the

rarest of rare cases; that the... court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

[26] After reading carefully the observation made above by the Hon'ble Supreme Court, I am of the view that instead of supporting his case, it goes against the petitioner himself as in the instant case, the guidelines formulated by the Hon'ble Supreme Court wherein the exercise of the extra ordinary power under Article 226 or the inherent powers under section 482 of the Code, this Court is of the view that the instant case does not fall under the categories of cases made in the guidelines, as already observed earlier, the prosecution made out a prima facie case under the relevant sections made in the charge sheet against the petitioner and constitute cognizable offences as such it is observed that there is no legal bar to prosecute under the provision of law, accordingly this Court is of the view that there is no malafide committed by the respondent no.2 in filing the complaint/FIR and further the investigating authority did not commit malafide during investigation as well as in filing charge sheet before the Court. The petitioner failed to put out the facts that on which ground the respondent no.2 maliciously instituted the present FIR with and ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudges.

[27] Over and above, as observed at para No. 103 of ***State of Haryana & Ors. -vs- Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335***, the Hon'ble Supreme Court gives a note of caution to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases the Court will not be justified in embarking upon the enquiry as to reliability or genuineness or otherwise of the allegation made in the FIR or the complaint and that the extra ordinary or inherent power do not conferred an arbitrary jurisdiction on the Court to act according to it whims or caprice, in this regard this Court is of the view that the present case as set out by the petitioner in his application as well as the submission made above by the learned counsel for the petitioner **does not come under** the rarest of the rare case category and the prosecution has set out prima facie case to go for trial. Accordingly, this Court is of the view that the exercise of extra ordinary power under Article 226 or the inherent power under Section 482 of the Code is not call for in the present case.

In ***Kanhaiya Lal -vs- State of Rajasthan reported in (2013) 5 SCC 655*** the Hon'ble Supreme Court at para No. 15 observed:

"15. It is settled in law that mere delay in lodging the first information report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory."

[28] Reference is made to the discussion and observation made earlier regarding the delay in lodging the FIR, this Court has already observed and made clear that considering backdrop of the case as discussed and observed above this Court accepted and found satisfactory to the explanation made in the charge sheet for delay in filing the FIR. Accordingly, submission of the learned counsel for the petitioner regarding the delay in filing the FIR is not acceptable.

Tameezuddin alias Tammu -vs- State (NCT of Delhi)
reported in (2009) 15 SCC 566 :

"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."

Again, as discussed and observed above, this Court is of the view that the observation made in the cited case goes against the petitioner as there is no improbable and belies logic which would be doing violence to the principle which governs the appreciation of evidence in criminal matter as such, this Court is of the view that the story let out by the prosecution is indeed probable.

Raju & Ors. -vs- State of Madhya Pradesh reported in
(2008) 15 SCC 133 :

12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain

presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.

[29] This Court is of the view that the Section alleged in the FIR and in the charge sheet contents serious panel provisions, the allegation of the petitioner that there was consensual sex between the petitioner and respondent No. 2, in so far as allegation of rape are concerned with the evidence of prosecutrix made out in the charge sheet as probable. Accordingly, this Court observed that the reliance made by the petitioner goes against him.

The Hon'ble Supreme Court in Criminal Appeal No. 1456 and 1457 of 2015 dated 31.08.2023 (***Abhishek v. State of Madhya Pradesh***) regarding exercise of inherent power under Section 482 of Cr.P.C. by the High Court, wherein the Hon'ble Supreme Court made the following guidelines at para No. 17:

"17. In Bhajan Lal (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the

extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

While going through the above mentioned 7(seven) cardinal principles laid down by the Hon'ble Supreme Court herein above and after giving due consideration of the facts and circumstances of the case and the discussion and observation made above by this Court, this Court is of the view that the case in hand does not fall in that category wherein such power should be exercised.

The submission of the learned counsel for the petitioner is that even after charge sheet was submitted, the High Court can still exercise its power under Section 482 of Cr.P.C. to quash the FIR, indeed it is true that FIR can be quashed even after charge sheet is filed before the Court, but this Court is of the view that it depends on the nature of the cases in hand. But, the case in hand as already discussed earlier even though charge sheet has been filed, the facts of the case in hand does not call for exercise of Section 482 of Cr.P.C. and to quash the FIR of the present case.

[30] In the light of the above discussion and observation made above and relying upon the observations of the Hon'ble Supreme Court, the points for consideration in terms of facts and law in the present case as set out by the petitioner are discussed and answered accordingly at this stage of the case. But, the onus lies on the prosecution whether the prosecution can prove its case or can prosecute the petitioner or not during the trial.

[31] For better appreciation of the facts and circumstances of the present case set out by both the petitioner as well as the respondents, this Court is of the view that the need to revisit the observation made in the above, Hon'ble Supreme Court's judgments and particularly **Neeharika Infrastructures Pvt. Ltd. vs. State of Maharastra & Ors. (2021) 19 SCC 401.**

At para No. 10.1, the Hon'ble Supreme Court observed that the inherent jurisdiction of the High Court under Section 482 Cr.P.C. can be exercised to quash the proceeding in the proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice and some of the exceptions carved out in the observation which are reproduced above. Considering the facts and circumstances as set out by the prosecution, this Court is of the view that the prosecution set out their case very well and there is no question of abuse of the Court and the exceptions carved out are not applicable in the present case.

[32] In view of the above and for the reasons stated above and having regard to the facts and laws laid down by the Hon'ble Supreme Court, the present Criminal Petition failed. There is no room for this Court to exercise its power under Section 482 of the Cr.P.C. to quash the FIR as the petitioner failed to make out its case.

Accordingly, the present Criminal Petition filed by the petitioner for quashing/setting aside the FIR is dismissed.

JUDGE

Bipin/Lucy