

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 2670 OF 2016

Mr. Mohmmmed Abad Islam Ansari ... Petitioner.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Mahesh Vaswahi a/w. Ms. Manashi Mahanta i/by Ms.
Anuradha Shinde, Advocate for the Petitioner.

Mr. K. V. Saste, APP for the State.

**CORAM : V. M. KANADE AND
Ms.NUTAN D.SARDESSAI,JJ.**

DATE : 23rd NOVEMBER, 2016

P.C. :

1 Heard the learned counsel appearing for the
Petitioner and the learned APP for the State.

2 By this petition filed under Article 226 of the
Constitution of India, the Petitioner is seeking a writ of
mandamus and/or any other appropriate writ and/or order
and direction for quashing the first information report dated
23.07.2014, which is registered at the Dharavi Police Station
under sections 376(d) r/w. 34 of the IPC vide CR No. 280 of

2014. In the complaint it is alleged that the complainant was rapped by the Petitioner/Applicant and one of the persons. The Applicant has been named in the FIR by the complainant. It is submitted by the learned counsel for the petitioner that the complainant had expired and therefore, there are some doubts regarding the manner in which the allegations made against the Petitioner can be proved before the Sessions Court. Secondly, it is submitted that the investigating officer, in the affidavit filed by him, has stated that the petitioner/applicant was at some other place alongwith his wife at the Jewellery shop. Said affidavit was filed by the investigating officer in the application for anticipatory bail filed by the applicant. He submitted that the direction may be given by this court to the investigating officer to produce the material which according to the learned counsel for the petitioner has been suppressed by the investigating officer. He, therefore, submits that this is a fit case where the proceedings initiated should be quashed.

3 It is not possible to accept this submission of the petitioner. It is well settled by the catenas of judgments of the Apex Court that FIR can be quashed by this court by exercising its writ jurisdiction under Article 226 of the Constitution of India read with section 482 of the Cr.P.C. but this power has to be exercised in a rare cases. We find that there is some material on record which shows involvement of the Applicant. We do not want to express any opinion on merits of the case.

Secondly, the Petitioner had initially approached this court for quashing the FIR by filing a criminal writ petition no. 1431 of 2015. Said writ petition was dismissed by this court by order dated 17th August, 2015. The Division Bench of this court has observed in the said order that the investigation is in progress and, therefore, we are not inclined to quash the proceedings at this stage. Now the investigation is over and the chargesheet has already been filed. So there is some material brought on record by the prosecution. At this stage to question as to whether any material has been suppressed by the investigating officer cannot be gone into while exercising writ jurisdiction for the purpose of quashing of the complaint. It is always open for the petitioner/ applicant to raise this issue at the trial. Needless to state that if the charge is framed, the petitioner/ applicant is at liberty to take application for discharge. If such application is filed, it shall be heard on merits in accordance with law.

4 The Petition is disposed of.

(Ms.NUTAN D.SARDESSAI,J)

(V.M.KANADE,J)

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