

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

Criminal Application [ABA] No.412 of 2016

(Pritam Prabhakar Rao Patil and another

vs.

State of Maharashtra, through P.S.O. Pathrot, District Amravati)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

Shri R.D. Wakode, Advocate for the Applicants.

Shri A.M. Deshpande, A.P.P. for the Non-Applicant / State.

CORAM : S.B. SHUKRE, J.

DATE : 24th AUGUST, 2016.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

On going through the order dated 07/06/2016 directing the registration of F.I.R. and further investigation under Section 156(3) of the Code of Criminal Procedure passed by the concerned Magistrate, which expresses nothing on the existence of the *prima facie* case or otherwise, I am of the view that there is *prima facie* non-application of mind on the part of the concerned authority in setting the law in motion against the applicants.

The learned A.P.P. has produced for my perusal the case-diary, medical reports and the statements of the witnesses which, however, *prima facie* do not support the allegations made in the complaint. It is specifically mentioned in the complaint that a weapon called 'fighter' has been used by the applicants in assaulting the complainant. But some of the witnesses say otherwise. The injury report

also does not suggest that any injury was sustained due to a metal weapon like fighter. In fact there were no injuries found to be present, when the complainant was medically examined on 10/05/2016. The incident alleged is of 29/04/2016. Apparently, the injury on the chest stated in this report does not have any connection with, what has been alleged to have taken place on 29/04/2016. These facts ought to have been considered by the learned Magistrate, when he passed the order on 07/06/2016. The law obliges the Court of Judicial Magistrate to consider the genuineness of the allegations made or otherwise before exercising his discretion under Section 156 of the Code of Criminal Procedure. This order is without any reason and, therefore, as rightly submitted by the learned Counsel for the applicant, exhibits non-application of mind on the part of the learned Magistrate. What has been initiated on the basis of an action taken without any application of mind, should not be allowed to result in taking away the liberty of the applicant. Therefore, I am inclined to grant this application. Hence, the order.

The application is allowed. The interim anticipatory bail granted to the applicant by the order passed by this Court on 30/06/2016 is hereby confirmed on the same conditions with modification of the condition of attending the police station and now it is directed that the applicant shall not attend the police station.

The application is disposed of in the aforesaid terms.

JUDGE

*sdw

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 26/08/2016