

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

CRIMINAL APPLICATION (APPA) NO. 461/2016
IN CRIMINAL APPEAL NO.232/2016.

Hemant Ghanshyam Kalaskar (In Jail)

-VERSUS-

The State of Maharashtra

CRIMINAL APPLICATION (APPA) NO. 371/2016
IN CRIMINAL APPEAL NO.196/2016.

Santosh Bandu There (In Jail)

-VERSUS-

The State of Maharashtra

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

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : DECEMBER 09, 2016.

Heard Shri A.C. Jaltare, learned
Counsel for the applicants/appellants and Shri
T.A. Mirza, learned A.P.P. for respondent State.

2. Submission of learned Counsel for the
applicants is, evidence on record does not show
that the victim was in a position to see faces of
accused persons as she could not even see colour
of their clothes in darkness. Her cross examination

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is pressed into service to show that she had no occasion to go in the area frequently used by labour and she could not have seen them earlier.

3. In this situation, learned counsel objects to the fact that the three accused persons are named in the FIR. He invites attention to the cross examination to show that only after police told the victim that these three persons are accused, she was convinced about their identity. He contends that thus, entire material on record as brought through deposition of the victim is doubtful and no finding of conviction can be based upon it.

4. In addition, he invites attention to absence of any medical evidence to show any forcible intercourse with the victim or then absence of any forensic evidence to connect the present applicants with it.

5. Learned A.P.P. on the other hand has invited attention to her examination in chief. He submits that the woman appears to be rustic and has given some answers in cross examination.

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However, Doctor examining her has found some injuries on her hand and similarly on the hand of one of the accused person. He further points out that immediately after incident, victim has gone to two neighbours complaining of rape by three persons.

6. He further points out that police station is at a distance of 12 kms and hence, a lady living alone without any support may have reported the matter belatedly. According to him, in this situation, at this juncture, no orders of bail can be passed.

7. Shri Jaltare, learned counsel for the applicants in brief reply submits that the applicants are not involved. They are unnecessarily behind the bars for last more than 3 years. He adds that stringent conditions can be imposed, but, they must be released on bail.

8. Taking over all view of the matter, we find that in depth appreciation of evidence on record is called for, which is not possible at this stage. The complaint of rape by victim, at least at

this stage does not appear to be false. There is no apparent reason for her to falsely name the present applicants.

9. We therefore, reject both the applications. Hearing of appeals is however expedited. Preparation of paper books is also expedited. Applicants are at liberty to file private paper books if they so desire. They are also at liberty to move for fixing date of hearing, after paper books are made available. Criminal Applications are accordingly disposed of. No costs.

JUDGE

JUDGE

Rgd.