

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

CRIMINAL APPLICATION (ABA) NO.728 OF 2016

Pushpa w/o Pradeep Shukla, Tah. & Dist. Gondia

-vs-

State of Maharashtra, Thr. PSO, PS Ramnagar, Gondia

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

Court's or Judge's Orders.

Shri Nitesh Samundre, Advocate for applicant.
Smt A. R. Kulkarni, APP for respondent/State.

CORAM : V.M. DESHPANDE, J.

DATE : November 11, 2016

This is an application under Section 438 of Criminal Procedure Code for grant of pre-arrest bail since the applicant is apprehending her arrest in connection with Crime No.243/2016 for the offence punishable under Sections 376(2)(N), 366, 344, 323 read with Section 34 of the Indian Penal Code.

Heard Shri N. Samundre, learned counsel for the applicant in extenso and also heard the learned Additional Public Prosecutor Smt Kulkarni. Also perused the reply filed on behalf of the State.

The submission of the learned counsel for the applicant is that there is a delay of ten days in lodging the first information report. Secondly, there is no concrete proof available as on today on records to show that the prosecutrix is mentally retarded girl and thirdly there are no witnesses to show that the prosecutrix was

abducted at the hands of the present applicant. The learned counsel invited my attention to the reported judgment of this Court in *State of Maharashtra vs. Pratapsinha @ Sanjay Shankarrao Chavan and ors. 2006 ALL MR (Cri) 2709* to buttress his submission that if two views are possible then the pre-arrest bail should be granted in favour of the applicant who knocks the door of the Court.

The first information report is not the last word of the prosecution. Rather it is the starting point of the investigation. By virtue of the first information report, the Investigating Officer is empowered to make the detailed investigation from all the angles. Delay in lodging of the first information report cannot be considered at the stage of deciding application for anticipatory bail especially when the allegations are very serious.

The applicant is accused of abducting a mentally retarded girl on the allegation that she made a promise to the said girl who is unable to take a reasoned decision that she will be marrying with a groom having a good status in the society. It is the allegation in the first information report that on the said pretext, the prosecutrix was taken away by the present applicant and she was locked for three days in a room and thereafter she was taken to Nagpur and was kept in the house of a daughter of the present applicant who is also one of the co-accused in the present crime.

It is the allegation in the first information report

that the husband of daughter of the present applicant Annu who is also one of the accused in the present crime had made forcible sexual attack on the prosecutrix. Not only that he allowed his friends to make forcible sexual attack on the prosecutrix. Law on the aspect of the rape is well crystallized by various decisions of the Honourable Apex Court as well as decisions of this Court. It is the applicant who has started the entire episode by enticing the prosecutrix on the promise that a suitable groom will be found for herself and ultimately to whom her marriage will be performed. Especially when there are allegations that the girl is mentally retarded and the investigation is still in its primary stage, I am of the view that it is not a case wherein the Court should exercise discretion in favour of the applicant only because she is a lady. In so far as the decision in ***State of Maharashtra vs. Pratapsinh S. Chavan*** (supra) is concerned, the facts in that case are altogether different and the said case was for cancellation of anticipatory bail.

Looking to the nature of serious accusations made against the applicant, the present application deserves to be rejected and the same is rejected.

JUDGE