

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [ABA] No.732 of 2016
[Narendra Chhabilal Patle & another Vs. State of Mah.]

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

Court's or Judge's orders

Mr. K. P. Sadavarte, Adv., for the Applicants.
Mr. Shirpurkar, APP for respondent.

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CORAM : P.N. DESHMUKH, J.

DATE : 08th December, 2016

The Applicants, who are named as accused in Crime No. 319/2016 registered with Tiroda Police Station, Distt. Gondia, for the offences punishable under Section 376 (2) (f), (l), (j) and (n) and Section 109 of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, have filed this application for grant of anticipatory bail.

According to counsel for the applicants, they are falsely implicated, as, prior to prosecutrix lodging a report, the applicants had lodged a report against her husband. It is further contended that even according to the contents of report, no case is made out involving the applicants in an offence under Section 376 and others, as aforesaid.

Learned APP has opposed the application on the ground that there is a direct evidence and there is nothing to disbelieve the contents of report made by the prosecutrix.

In the background of the facts aforesaid, heard the learned counsel for the parties and perused the case diary made available by learned APP.

It is found that on 12th April, 2016, a report was lodged by the Applicant no.2 against Sanjay Katre, the husband of prosecutrix, and his younger brother, alleging an assault by these two persons on the said applicant in the night, due to which the applicant no.2 as well as his wife sustained injuries in the nature of abrasions. It is also contended that when the Applicant No.1 intervened, he was also subjected to beating. It is, thus, the case of the applicants that in view of the report lodged by Applicant No.2 as aforesaid, they are falsely implicated by the prosecutrix. It is material to note that the report was lodged by the applicant no.2 on 12th April, 2016, while the report lodged by the prosecutrix naming the applicants as accused in this crime is dated 08th October, 2016, i.e., almost after six months. As such, it cannot be said that lodging of a report by the prosecutrix against the applicants is a direct outcome of the report lodged by the applicants against her husband, as it is dated 12th April, 2016.

Considering the case of the applicants on merits, however, on perusal of the report 8th October, 2016 lodged by the prosecutrix, it is prima facie found that she has stated in respect of the incidents occurred in 2009-10 and thereafter till December, 2015 when she got married, involving both the applicants and co-accused Surendra Patle. The contents of the report prima facie do not appear to be convincing wherein it is alleged that in the year 2009-10 when she visited the house of her cousin - Meenakshi at Nagpur, the Applicant No.1 indulged in physical relations with her though they were related to each other as first cousins. Here, the report also reveals that a similar act was also performed in the said night by co-accused Surendra who is the brother of Narendra, and when she complained about the said two, the Applicant No.2, who is stated to be her relative as husband of her sister, did not pay any heed to it.

Further contents of the report also reveal that even one day prior to her engagement, the Applicant No.1 visited her house at Thanegaon and sexually molested her. Though the prosecutrix has stated that said fact was informed by her to her mother upon which she scolded the applicant no.1, on a specific query put to learned APP, it is stated that statement of Satyabhama, mother of prosecutrix, is silent on this aspect. As such, it is noted that the complainant has exaggerated her version. This exaggeration is

substantiated by the statement of prosecutrix that when she was thirteen or fourteen years old, she was also sexually assaulted by the applicant no.2; yet there was no complaint.

Having considered the contents of the report which prima facie do not appear to be convincing, the application is liable to be allowed by confirming the interim bail granted to both the applicants by this Court by its order dated 1st November, 2016 as per order below:-

[a] Application is allowed.

[b] Interim bail granted to the applicants is confirmed with a further direction to the applicants to attend the Investigating Officer as and when called till filing of a charge-sheet.

Judge