

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

CRIMINAL APPLICATION (APPLN) NO.23 OF 2021

(Sau. Maya w/o Datta Khandare Vs. State of Maharashtra thr. PSO PS Umarched,
Tah. Umarched, Dist. Yavatmal and others)

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

Court's or Judge's orders.

Mr. J.S. Wankhede, Advocate for Applicant.
Mr. S.A. Ashirgade, APP for Non-Applicant 1/State.

CORAM: ROHIT B. DEO, J.

DATE: 12th MARCH, 2021.

This application is preferred by the complainant seeking cancellation of pre-arrest protection granted by the Additional Sessions Judge, Pusad to the non-applicants 2 and 3 herein in connection with apprehended arrest in Crime 379/2020 registered with Police Station Umarched, Tahsil Umarched, District Yavatmal for offences punishable under Sections 376 (2)(h), 376 (2)(n), 376 (D) and 506 of the Indian Penal Code and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. I have perused the reasons recorded by the learned Sessions Judge and for reasons spelt out hereinafter, I am satisfied that the exercise of discretion is neither arbitrary nor otherwise illegal. Indeed, the view taken by the learned Sessions Judge is the only view which could have been taken.

3. On the basis of report dated 18.08.2020 three persons are implicated in the alleged crime.

4. The complainant alleges that in Diwali 2019 and on 30.10.2019 she was offered sweet mixed with sedative and thereafter was subjected to forcible sexual intercourse. The accused allegedly video-graphed the crime and subsequently took advantage of the complainant and satisfied their physical lust by threatening to make public the photographs and video-clip. It is further alleged that on 04.07.2020 the accused came to the house of the complainant and demanded sexual favour and when the complainant refused to oblige, the accused assaulted her.

5. In so far as non-applicant 2 – Shivaji is concerned, the learned Additional Sessions Judge, Pusa noted that the prosecutrix and accused Shivaji are neighbours. It is further noted that the neighbours of the complainant had already filed police report against the prosecutrix and her husband about the threat of false implication. The learned Additional Sessions Judge noted that while the incident allegedly occurred in Diwali 2019 and from time to time thereafter, the complainant lodged the report only on 18.08.2020. It is further noted that the mobile of accused Shivaji which was allegedly used to video-graph the crime is seized and nothing incriminating is found.

6. In so far as non-applicant 3 – Pawan is concerned the learned Additional Sessions Judge, Pusad invoked the principle of parity since accused Shivaji was granted pre-arrest protection. More significantly, the learned Additional Sessions Judge, noted that the alleged sexual misconduct occurred eight to nine months prior to the report and yet the name of accused Pawan is not mentioned in the first information report although accused Pawan is a resident of the very same locality where the complainant is residing. It is further noted that the blood sample of the accused is obtained and that there is no evidence of video-graphy etc. available on record.

7. The learned counsel for the applicant submits that while the first information report is lodged on 18.08.2020, the complainant did lodge a complaint on 16.07.2020 and followed with the another complaint. Assuming that the complainant did lodge such complaints, the first complaint even according to her is more than nine months of the rape. The husband of the applicant is the editor of a newspaper. In this view of the matter, there is absolutely no credible explanation for the highly belated complaint.

8. Notably, even in the complaint dated 16.07.2020 the name of non-applicant 3 – Pawan is not mentioned nor is there any description whatsoever of the persons who allegedly subjected her to forcible sexual intercourse.

9. The learned counsel for the applicant then submits that on 23.03.2020 non-applicant 2 – Shivaji threatened her that if the complaint is not withdrawn her family shall be killed. Notably, while the threat was allegedly issued by non-applicant 2 – Shivaji on 23.10.2020 the report was lodged on the next day. The report is treated as non-cognizable and there is nothing on record to show that the allegation levelled was verified and found substantiated. In any event, the report which is treated as non-cognizable is duly considered by the learned Additional Sessions Judge while protecting the non-applicants 2 and 3.

10. No further submission is advanced.

11. I see no reason to interfere with the discretion exercised by the learned Additional Sessions Judge.

12. The application is dismissed.

JUDGE