

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

CRIMINAL APPLICATION (BA) NO.587 OF 2021

(Panindarkumar Shriniwas Baswa Vs. The State of Maharashtra thr. PSO PS
Sawanghi Meghe, Dist. Wardha)

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

Court's or Judge's orders.

Mr. Mir Nagman Ali, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 14th JULY, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant and five others allegedly gang raped the prosecutrix.

3. On the basis of report dated 27.06.2020 Crime 229/2020 is registered with Police Station Sawangi Meghe, District Wardha for offence punishable under Sections 376D, 342, 506 of the Indian Penal Code and the applicant is arrested on 28.06.2020.

4. The prosecutrix alleges that she was lured to come to the farmhouse of one Dr. Dhande by co-accused Chandankhede under the pretext of providing a job.

The prosecutrix along with her husband accordingly went to the farmhouse along with Chandankhede. While some co-accused restrained/detained the husband on the ground floor the others raped the prosecutrix, one after the other, on the first floor.

5. Mr. Mir Nagman Ali submits that there are no visible injuries as would *prima facie* show that the prosecutrix was gang raped by six persons. The absence of visible injury marks is irrelevant. On the contrary, if the prosecutrix who is hardly 18 to 19 years old is gang raped by as many as six persons, and if she was restrained by some of them, as is the allegation in the report, the chance of she suffering serious injuries may be negligible. At any rate, this aspect is best left to the trial court to consider.

6. Mr. Mir Nagman Ali would submit that the material on record indicates, that the rape, if at all, was consensual. At this stage, I do not consider it appropriate to look into this aspect. The statement of the labour who was working in the agricultural field is that the prosecutrix left crime. In any event, if according to the prosecutrix she did not consent, then it would be for the accused to dispel the presumption which is statutorily provided in Section 114-A of the Indian Evidence Act, 1872. The offence is punishable under Section 376D of the IPC, and therefore, Section 114-A of the Indian Evidence Act, 1872 is clearly attracted. It would only be during the course of the trial that the

accused will have to dispel the presumption on the basis of evidence adduced.

7. The allegation is heinous and if convicted, the punishment may be extremely serious.

8. No case is made out for exercise of discretion.

9. The application is dismissed.

JUDGE