

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

CRIMINAL APPLICATION (APL) NO. 677 OF 2021

Vishukant S/o Tukaram Gutte

Vs.

The State of Maharashtra, thr. P.S. Washim City, Tq. & Dist. Washim

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

Court's or Judge's orders.

Shri A.M. Jaltare, Advocate for the applicant.

Shri S.S. Doifode, A.P.P. for the non-applicant No.1/State.

CORAM : V.M. DESHPANDE AND AMIT B. BORKAR, JJ.

DATE : 19th JULY, 2021.

1. Heard Shri A.M. Jaltare, learned counsel for the applicant. The Court is further assisted by Shri S.S. Doifode, learned Additional Public Prosecutor for non-applicant no.1/State.

2. The present application under Section 482 of the Code of Criminal Procedure is filed for quashing of First Information Report recorded at Police Station Washim vide Crime No.994 of 2021 for the offence punishable under Sections 376 and 506 of the Indian Penal Code.

3. Non-applicant No.2, victim is working as a Police Constable since 2003. The applicant is also a Police Officer and he is a Police Inspector of Police Station, Ardhapur, Dist. Nanded. As per F.I.R. dated 03.06.2021, the incident occurred

on 30.05.2021. As per the F.I.R., the incident of commission of sexual intercourse on the victim by the applicant against her wish and will was committed in the house of the victim.

4. The F.I.R. recites that in 2006 the victim was discharging her duty as a Lady Police Constable at Police Station Malegaon, Dist. Washim. During the period of 2007-2008, the applicant was discharging his duty as Police Sub Inspector at Malegaon Police Station and due to that they were well acquainted with each others. It is stated in the report that on 30.05.2021, the applicant came to Washim and visited the house of the victim. The time was between 6 p.m. to 7 p.m. and since there was a week holiday, the victim was present in her house. The husband of the victim was out of station. According to the complaint, the victim noticed the applicant has consumed liquor. The report shows that when she was preparing tea, the applicant, all of a sudden, dragged her on the cot and tried to establish sexual relation, which was resisted. It was specifically stated in the report that she has received some injuries. Still, against wish of victim, according to the report, applicant sexually assaulted her and, thereafter, after giving threats, applicant left her. It is further stated in the report that husband came back to notice that the victim was weeping and upon inquiry, she disclosed him about the incident. However, since the applicant is working as a Police Inspector, due to the fear that the image of the victim and her family members will be tarnished, they decided not to lodge

report immediately. However, subsequently they lodged a report.

5. It appears from record that applicant had approached this Court by exercising jurisdiction under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail. The application was registered as Criminal Application (ABA) No.360 of 2021 and on 30.06.2021, *ad interim* relief was granted in his favour and subsequently, on 07.07.2021 this Court (Coram : Vinay Joshi, J.) allowed the application and as such the applicant is protected from arrest.

6. Mr. Jaltare, learned counsel for applicant canvassed three points seeking quashing of First Information Report. They are,

- (i) there is a delay in lodging the F.I.R.,
- (ii) the incident itself has not occurred. And
- (iii) there are no injuries on the person of the victim as could be seen from the reply filed on behalf of the prosecution while opposing the anticipatory bail.

The learned counsel for the applicant, therefore, submits that application needs consideration. He further submits that applicant is falsely implicated in the crime and, therefore, prays for quashing the First Information Report.

7. So far as the first point is concerned, delay in lodging First Information Report can never be fatal for the

prosecution at the time of inquiry. It is a settled law that it is always open for the first informant to offer explanation of delay either at the stage of inquiry, during investigation or during the course of trial. It is an admitted position that the investigation is yet to be over. It will be always open for the investigating officer to record further statement of the victim wherein, she may or may not offer any explanation. Further, during trial also she had every right to offer explanation to the Court as to why there was a delay on her part. Apart from that, if we peruse the F.I.R., the victim herself has offered explanation for delay. Now, whether that explanation is plausible or whether that should be accepted or not, can be determined only during the course of trial and not at threshold.

In that view of the matter, we are rejecting the first contention raised on behalf of the learned counsel for the applicant that F.I.R. against the applicant is nothing but a concoction.

8. The second submission made by the learned counsel for the applicant is that the incident in question itself has not happened.

We are afraid to accept this submission in view of the *prima facie* reading of F.I.R. However truthfulness or otherwise of the statements asserted in F.I.R. can be determined only during trial and not at any other stage.

Therefore, the second submission is also rejected.

9. That leads us to the third and the last submission made by the learned counsel for the applicant that there was no injury on the body of the first informant. The law is well crystallized on this issue by various judgments of the Hon'ble Apex Court that noticing of the injury on the person of a rape victim is not a *sine qua non* for determining factum of commission of the offence. It is a settled law that asking for injury on the person of the rape victim is nothing but rubbing salt on her injury of rape. Further, during the course of trial, it will be always open for learned Judge before whom the trial will be conducted, to examine the truthfulness or otherwise of the prosecution case and, therefore, merely because there are no injuries on the person, that cannot be a determining factor to record the finding by this Court that the prosecution case is false, especially when the investigation is not over at all.

Thus, the third point also cannot be sustained.

10. The cumulative effect of discussion hereinabove leads us to pass the following order.

The application is rejected.

JUDGE

JUDGE