

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

CRIMINAL APPLICATION (APL) NO.959/2018

1. Shubham s/o Radhesham Daroga,
aged 24 years, Occ. Nil, r/o Durga Bhavan,
Bus Stand Square, Lonar, Tq. Lonar,
Dist. Buldhana.
2. Pankaj s/o Bholusing Thakur,
aged 21 years, Occ. Nil, r/o Mundada Colony,
Hinganghat, Dist. Wardha.
3. Nikhil s/o Santoshsingh Thakur,
aged 19 years, Occ. Nil,
r/o Near Maheshwari Bhavan,
Hinganghat, Dist. Wardha.
4. Akil s/o Santoshsingh Thakur,
aged 19 years, Occ. Nil,
r/o Near Maheshwari Bhavan,
Hinganghat, Dist. Wardha.

....APPLICANTS

...VERSUS...

1. The State of Maharashtra through
Police Station Officer, Police Station,
Channi, Akola, Tq. Patur, Dist. Akola.
2. Sau. Manisha w/o Nilesh Thakur,
aged 26 years, Occ. Nil, r/o Alegaon,
Tq. Patur, Dist. Akola.

...NON APPLICANTS

 Mr. S. S. Shingane, Advocate for applicants.
 Mr. M. J. Khan, A.P.P. for non applicant no.1.
 Mr. S. V. Sirpurkar, Advocate for non applicant no.2.

CORAM:- V. M. DESHPANDE AND
ANIL S. KILOR, JJ.

DATE:- JANUARY 05, 2021

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. By filing the present application under Section 482 of the Code of Criminal Procedure, the applicants are praying for quashment of First Information Report registered with Police Station, Channi, District Akola for an offence punishable under Sections 376(1), 376(2) (F) (N), 506, 417 of the Indian Penal Code vide crime No.160/2018. It appears that in view of the order dated 16.10.2018, the charge-sheet is not filed.

3. According to the learned counsel for applicants, there is delay of one year in lodging the FIR. He also submits that the applicant no.1 is not having any firearm license and/or no firearm was seized from him. He submits that the FIR is of stereotype nature and therefore he prays for quashing of the FIR.

4. Mr. Khan, learned A.P.P. strongly opposes the prayer made by the learned counsel for the applicants. He also invited

our attention to the detailed reply filed on behalf of the prosecuting agency. Mr. Sirpurkar, learned counsel for non applicant no.2-complainant supports the submissions made by the learned A.P.P. and also read out the submissions made by the non applicant no.2.

5. Insofar as delay is concerned, law is well crystallized on the said issue. Delay cannot be the sole criterion or ground for quashing FIR, which otherwise shows commission of cognizable offence. It is always open for the complainant to explain the delay at the time of filing of the complaint. Merely because the delay is not explained in the complaint that itself is not sufficient to view the case of the complainant with tainted eyes since it is always open for the prosecution to explain delay during the course of the investigation or even during the course of trial. In that view of the matter, an opportunity is required to be given to prosecution to explain the delay during the course of trial. Delay cannot be the criterion for throwing the case of the prosecution in dustbin especially when the FIR makes out case for investigation. In that view of the matter, contention of Mr. Shingne, learned counsel that FIR must go because of the delay in lodging of the FIR, has to be floored down and accordingly it is rejected.

6. Law in respect of the power under Section 482 of the Code of Criminal Procedure for quashing of the FIR is well crystallized by various decisions of the Hon'ble Apex Court. We ourselves will not burden this judgment by citing various authoritative pronouncements of the Hon'ble Apex Court. Suffice it to state that the Hon'ble Apex Court in *State of Haryana Vs. Bhajanlal and ors.*; reported in *AIR 1992 SC 604* has given guidelines when this Court shall exercise its powers under Section 482 of the Code of Criminal Procedure.

7. The FIR in question clearly attributes overt acts on the part of each of the applicants qua complainant-non applicant no.2. She has very vividly described every single assault committed on her by the present applicants. Not only that, in very clear words, she has reported to the police authorities while committing sexual assault that the applicants photographed the forcible sexual assault on her at different points of time.

8. Applicants who are on bail will get ample opportunity to cross-examine complainant-non applicant no.2 during the course of trial to test veracity of statements made in FIR or her evidence which she will be deposing from witness box on oath.

9. The statement of learned counsel for applicants that the applicant no.1 is not having any firearm license, is of no use since it may be a country made pistol and it is also possible that he might be in illegal possession of such a pistol. Insofar as non recovery of weapon aspect is concerned, merely because there is a lapse on the part of the investigating officer, that cannot be a bounty or premium in favour of applicant no.1, who has committed rape on the prosecutrix taking disadvantage of their close relations.

10. In our view, the present case is a case wherein the prosecution must be given the fullest opportunity to adduce detailed evidence to prove this charge. No case is made out by the applicants. The application is, therefore, rejected.

Rule is discharged.

JUDGE

JUDGE

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**Yogesh
Kahale**

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Yogesh Kahale
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