

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.1105 OF 2023

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|---------------------------------|----------------|
| 1. Sanjay s/o Babasaheb Nisarge | |
| 2. Vijay s/o Babasaheb Nisarge | ... APPLICANTS |

VERSUS

- | | |
|-----------------------------|-----------------|
| 1. The State of Maharashtra | |
| 2. XXXXXX. | ... RESPONDENTS |

Mr. A. K. Bhosle, Advocate for the applicants
Mr. V. S. Badakh, APP for the respondent/State
Mr. S. V. Kale, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2023

P.C. :-

1. Applicants apprehend arrest in connection with 256/2023 registered with Pachod Police Station, Dist. Aurangabad for the offences punishable under Sections 376-D, 506 r/w 34 of IPC.

2. First information report came to be lodged on 22/06/2023 at around 10.43 pm in respect of the incident occurred on 20/06/2023 at around 4.30 pm. It is the contention of the informant that applicants came to the spot and committed forcible rape on her. She claims in the first information report that she was scared after the incident and therefore did not inform about it to anyone else but at around 7.30 pm told about the incident her husband. As both of them were scared no

immediate complaint was lodged and the report is recorded on 22/06/2023.

3. Learned counsel for the applicants submit that the informant herein is in habit of lodging false reports against the villagers and in this regard first information report bearing No. 206/2023 and 433/2022 are referred to. It is his submission that this is a case of false implication and having regard the fact that there is unexplained delay in lodging of the report, the liberty of the applicants deserves to be protected.

4. Learned APP and learned counsel for the informant opposed the said submission. It is the contention of the learned counsel for the informant that it is case of gang rape and considering the nature of incident the informant was scared delay in lodging FIR does not become fatal. They also relied upon the statement of the informant recorded before the learned Magistrate under Section 164 of Cr.P.C. Thus, according to them it is not a case for grant of anticipatory bail.

5. There is no dispute about the fact that the report in respect of the alleged incident occurred on 20/06/2023 is given to the police on 22/06/2023 at around 10.43 pm. Though it is contended by the learned counsel for the informant that the informant was scared after occurrence of the incident, however, in her statement under Section 164 of Cr.P.C.

she does not claim so on the contrary it is her contention that after the occurrence of the incident she was assaulted on her head and therefore she became unconscious. According to her at about 5.30 pm to 6.00 pm her father-in-law came to the agricultural field and thereafter he called the husband of the informant. Her husband came to fetch her from the agricultural field and thereafter they went home. It is stated that the delay is caused in lodging of the FIR as on the next day of the incident she along with her husband went to the hospital at Aurangabad. The statement under Section 164 of Cr.P.C. is contrary to her allegations in FIR. *Prima facie*, there is no substance in the claim of the informant that she was scared and therefore report was not lodged immediately. Moreover, her statement made before the learned Magistrate is falsified from the statement of one of the witness who had seen the informant alone going from the agricultural field towards her house. Therefore, there is no reason to accept she became unconscious and only after her father-in-law came to the agricultural field and thereafter he called her husband and thereafter he was taken to the home.

6. Her contention about she being subjected to the gang rape does not get support from the medical certificate on record. If it is the case of the informant that in the agricultural field she was subjected to forcible sexual intercourse by the applicants herein, it does not stand to any

reason as to why no other injury was caused on her person. As far as her statement of causing injury to the head is concerned, the first information report is silent about it. Thus, there is reason to believe that after getting knowledge of the medical report, her version has been improved by stating that the applicants had assaulted her on her head. *Prima facie*, considering these facts create serious doubt about the genuineness of the report lodged by the informant. This coupled with the previous complaints lodged against the other villagers by the informant make this case *prima facie* not acceptable. Hence the application is allowed in terms of interim order dated 10th July, 2023.

(R. M. JOSHI, J.)

ssp