

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.346 OF 2024****Hasan Latif Shaikh****....Appellant****V/s.****The State of Maharashtra and Anr.****....Respondents**

Mr. Niranjan Mundargi i/b. Mr. Vikrant Shinde for the Appellant.**Mr. Ashok R. Metkari, APP for Respondent No.1-State.****Ms Payal Vardhan for Respondent No.2.****Mr. N.B. Dhaygude, ASI, present.**

CORAM : SANDEEP V. MARNE, J.
Judgment Reserved On : 22 July 2024.
Judgment Pronounced On : 24 July 2024.

JUDGMENT :

1) This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging order dated 11 January 2024 passed by the learned Special Judge, S.C.& S.T.(P.O.A.) Act, Satara, rejecting the application filed by the Appellant for grant of bail in connection with C.R. No.1360 of 2023 registered with Phaltan Police Station (Rural) District-Satara, for offences

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punishable under Sections 323, 342, 343, 506, 376 and 376 (D) of the IPC, Sections 3(1)(w)(i), 3(2)(w)(ii), 3(2)(v), 3(1)(h) of the SCST Act and Sections 16, 17 and 18 of the Bonded Labour System (Abolition) Act, 1976. The impugned order dated 11 January 2024 is passed on second bail application since earlier Criminal Bail Application No.584 of 2023 was rejected on 5 September 2023 and after filing of charge-sheet dated 2 September 2023, fresh bail application was filed by Appellant, which has been rejected by order dated 11 January 2024.

2) The prosecution story is that the Complainant and her family were returning from Andhra Pradesh after performing labour job and alighted at Daund Railway station at 10.00 a.m. in November -2022. That Appellant approached Complainant and her husband offering them agricultural labour work and negotiated the labour rate. After such negotiations, Appellant gave Rs.10,000/- to the family towards advance. The family was then taken to a tin shed at Village-Sonwadi, Taluka-Phaltan, District-Satara. When Complainant and her husband returned after answering nature's call, they did not see their children. That the Appellant's wife informed the Complainant that the children were taken for watching a movie at Appellant's house in the village. At 6.00 p.m. Appellant arrived at the tin shed and informed the Complainant that the two elder children would reside in Appellant's house in the village and only the youngest daughter shall remain with the Complainant. Initially, resistance was shown by Complainant's husband to the said arrangement, but after consulting with the other labourers, the couple agreed to the arrangement. On the following day, Complainant and her family erected temporary shelter near the

hutments of other labourers and the husband was taken away with other male labourers for work whereas Complainant performed the work of filling of coal in gunny bags. This was the routine for about four days. Every day Appellant used to keep one child at his house and one child in the company of the Complainant and during night, he used to take all the three children in his house at the village.

3) It is further alleged in the FIR that on 19 June 2023, Complainant's husband left for labour work at 8.00 a.m. and the younger daughter was with the Complainant. She performed the work of filling up coal gunny bags during entire day. At 6.00 p.m. her husband returned and at that time Appellant took couple's daughter with him. At 8.30 p.m. Complainant's husband went to Appellant's house in the village with food for their children. Since he did not return, Complainant went inside the hut in which her in-laws were staying and informed them about her husband not returning from the village. She returned in her hut and was waiting for return of her husband. After some time she heard Appellant shouting in loud voice at other labourers and threatening them not to come out of their huts. Thereafter, Appellant entered inside Complainant's hut and demanded sexual pleasure from her, which was refused by her. That Appellant threatened Complainant stating that if she desired safety of husband and children, she should allow Appellant's demand. That Complainant attempted to resist, but the Appellant made sexual intercourse with her by use of force. After Appellant came out of the hut, his another accomplice (unknown) went inside and he also committed rape on Complainant. That thereafter two to three persons went inside and they also raped the

Complainant. Since the Complainant did not know said persons, she is unable to disclose their names. As the Complainant noticed some more persons standing outside the hut, she feigned unconsciousness, because of which some of the persons kicked her. Thereafter Appellant and persons accompanying him left and the Complainant took shelter in nearby sugarcane field till about 4.00 a.m. At about 6.00 a.m., she heard her husband calling and looking for her and therefore she came out of the field and saw her younger daughter with her husband. She informed the entire incident to the husband and enquired about two other children. When the husband informed that two other children were kept locked by Appellant and that if they did not leave the spot, he would kill them. Complainant and her husband left with younger daughter and came to Pandharpur by bus. From Pandharpur they arrived by train at Lonavala and because of non-availability of funds, they performed work at Lonavala at relative's place. After earning some money, they arrived at Khopoli by bus and thereafter went to relative's house at Mulshi, Post-Jambhulpada, Taluka -Sudhagad, District-Raigad and informed him about the entire incident. The said relative informed the entire incident to Mr. Ramesh Waghmare, an activist of *Shramjivi Sanghatana*, who then informed the entire incident to Mr. Vivek Pandit, President of *Shramjivi Sanghatana*. Said Vivek Pandit called the Complainant at Usgaon. When the Complainant narrated the entire incident to Shri Pandit, he sent his party workers alongwith the Complainant at Pandave Police Station. Shri Pandit contacted Satara Police and this is how the First Information Report came to be lodged at Phaltan (Rural) Police Station, District Satara on 7 July 2023 against Appellant and four unknown persons.

4) Appellant came to be arrested on 7 July 2023. It appears that he filed application for bail, which was rejected on 5 September 2023. Chargesheet came to be filed on 2 September 2023 and Appellant filed fresh bail application on 19 December 2023. By impugned order dated 11 January 2024, fresh bail application is also rejected by the learned Special Judge. Aggrieved by the order dated 11 January 2024, Appellant has filed the present appeal under the provisions of Section 14-A of the SCST Act.

5) Mr. Niranjan Mundargi, the learned counsel would appear on behalf of Appellant and would canvass following submissions in support of his plea for bail:

- i) That there is gross delay in registration of the FIR as FIR is registered on 07 July 2023 in respect of alleged incident of 19 June 2023.
- ii) That on account of such gross delay in filing of the FIR, the medical examination of the Complainant has also been conducted after considerable time gap.
- iii) Considering the serious allegations levelled by the Complainant, delay of 19 long days would be fatal.
- iv) That the allegations are otherwise unbelievable in the light of admitted position that Appellant has admitted children of all the labourers, including that of the Complainant, in the school. If Appellant had any ill-intention towards complainant, he would not take care of her children by admitting them in school. This admitted conduct of the Appellant need to be taken into consideration while considering his continued incarceration.

- v) That statements of several labourers are recorded, which do not indicate happening of the alleged incident in any manner. That the said labourers residing in nearby hutments did not hear any commotion as sought to be alleged in the FIR.
- vi) That the claim of some labourers about hearing alleged threats of Appellant appear to be unbelievable as none of them bothered to even enquire about complainant after the alleged incident.
- vii) That it is unbelievable that the Complainant and her husband would flee the village without making any attempt to rescue their other two children, who were admittedly with Appellant.
- viii) That despite prolonged custodial interrogation of Appellant, police have not been able to identify or trace the so called accomplices of Appellant, thereby making the entire story of gangrape wholly unbelievable.
- ix) That the above factors make the entire incident narrated by the Complainant in the FIR to be totally unbelievable.
- x) That Appellant's harsh treatment to the labourers in general and he slapping Complainant's husband, in particular, could be the reason for his false implication in the incident.
- xi) That there are no criminal antecedents against Appellant.
- xii) That the Appellant has been in custody for more than one year and considering the fact that the trial is not likely to be concluded in near future, the Appellant deserves to be released on bail.

6) Ms. Payal Vardhan, the learned counsel has been appointed by this Court vide order dated 29 April 2024 from the panel of advocates on Legal Aid to represent Respondent No. 2-Complainant. She would oppose the appeal submitting that Appellant is involved in heinous crime of committing gang rape on Complainant and his application has been twice rejected by the learned Special Judge. She would submit that slight delay of 18 days in lodging FIR is attributable to the tribal and poor background of Complainant who was required to take assistance of an organisation for the purpose of lodging the same. That the said delay in lodging the FIR is duly explained by the events narrated in the FIR after the incident. She would take me through the statement of the Complainant, her husband and mother-in-law recorded by the learned Magistrate under the provisions of Section 164 of the Code. Additionally, she would rely upon statements of nearby hutment occupiers, who have clearly vouched Appellant arriving at Complainant's hut and issuing threats to neighboring labourers. That they have further witnessed Appellant entering complainant's hut and she shouting thereafter. That the neighbours were terrified on account of Appellant's threats and were well aware of his capacity to execute such threats since he was in the habit of thrashing any labourer, their family members if they failed to act as per his desire. That this is clear case of Complainant and her family being lured to work with Appellant, the family being held to ransom by illegally keeping complainant's children in custody and thereby committing the heinous crime of gang rape by locking complainant's husband in his house. She would submit that considering the above circumstances, this is not a fit case where Appellant deserves to be enlarged on bail. She would pray for dismissal of the Appeal.

7) Mr. Metkari, the learned APP appearing for Respondent No.1-State would oppose the Appeal. He would submit that Appellant has taken disadvantage of illiteracy and poverty of Complainant in commission of the crime. That several witnesses have supported the complaint. That though the charge-sheet has been filed on 2 September 2023, the other accused involved in the crime are yet to be identified and traced. He would pray for dismissal of the Appeal.

8) I have considered the submissions canvassed by the learned counsel appearing for the parties and have perused the records of the case placed along with the appeal.

9) The sheet anchor of Mr. Mundargi in support of his submissions for seeking bail is delay in registration of FIR. The incident occurred on 19 June 2023 whereas the FIR has been lodged on 7 July 2023. There is thus delay of about 18 days in lodging FIR. In ordinary circumstances, considering the serious accusations levelled in the FIR, delay of 18 days could have been considered as a factor relevant for enlargement of the accused on bail, especially after his incarceration in jail for over one year. However, in the present case, complainant's background as well as Appellant's position is required to be taken into consideration to examine whether delay of 18 days can be a reason enough for granting bail to him. Perusal of the FIR, as well as the statements of various witnesses would undoubtedly indicate that Appellant appears to be source of terror amongst the labourers engaged by him. Statements of various witnesses, *prima-facie*, indicate that Appellant had adopted a *modus-operandi* of keeping children or

family members of the labourers in custody with a view to ensure that they do not flee. Another *modus-operandi* appears to be granting of advance to labourers and then keep custody of their children for extraction of work from them for adjustment of such advance to them. All the witnesses appear to be in sync on this aspect. Various witnesses have also referred to instances where Appellant has indulged in thrashing the labourers and their family members, if they acted contrary to his desire. It therefore, *prima-facie*, appears that Appellant created a reign of terror amongst the labourers and their family members. Complainant has stated in her statement accompanying the FIR that her husband informed her that the Appellant, who had kept children in his custody would kill the couple if they did not immediately flee. In such atmosphere of sheer terror created by Appellant, whether it was possible for tribal and illiterate lady to show courage to lodge FIR against Appellant immediately after the incident is the issue.

10) Also of relevance is the fact that Complainant is ordinarily resident of Village-Vandroshi, Post-Jambhulpada, Taluka-Sudhagad, District-Raigad and she was at Village-Sonwadi, Taluka-Phaltan, District-Satara where the incident occurred. She has arrived at Village-Sonwadi alongwith her family just few days before the incident and wasn't too familiar with the said place. Also, Complainant belongs to tribal community and is not literate. The family performs odd labour jobs by wandering in various parts of the country. This is clear from the fact that complainant and her family were asked to perform labour work at Village-Sonwadi by Appellant when they were on their way back from Andhra Pradesh after performing labour job for six months.

11) Considering the factors of (i) atmosphere of terror created by Appellant amongst labourers and their family members, (ii) arrival of Complainant and her family at the village just few days before the incident, (iii) tribal and illiterate background of Complainant, (v) Complainant and her family being wandering labourers, it becomes difficult to believe that Complainant was in a position to approach the local police at Phaltan to lodge the FIR against the Appellant immediately after the incident.

12) FIR also gives detailed account of journey undertaken by Complainant after the incident and lodging of FIR after seeking guidance from activists of *Shramjivi Sanghatana*. Considering these circumstances, delay in lodging the FIR *ipso facto* cannot be a ground for enlargement of Appellant on bail.

13) Mr. Mundargi has highlighted the factum of Appellant and his wife admitting children of labourers, including that of Complainant, in ZP School at Village-Sonwadi. Reliance in this regard is placed on the statement of Headmaster of the School, which shows that 19 children including children of Complainant were taking education in the said School. However, from statements of all witnesses, adoption of *modus operandi* by Appellant of keeping custody of children of labourers is clearly borne out. Thus, the so-called act of imparting education to children in ZP School cannot really be considered as a mitigating factor in favour of Appellant for deciding the present bail application. Also of relevance is the fact that the children were admitted in the School during February to July 2023 and all of them stopped coming to School from 7 July 2023, which is the date of lodging the FIR.

14) Statements of the Complainant, her husband and her mother-in-law have been recorded under Section 164 of the Code which *prima-facie* indicate involvement of Appellant in the crime. Complainant's mother-in-law has stated in her statement given to the police on 8 July 2023 that she heard Appellant threatening other labourers not to come out of their hutments. She has further seen Appellant entering Complainant's hut. She has also heard Appellant asking the Complainant for sexual interaction under the threat of killing her husband and children. True it is that in the statement recorded under Section 164, she has not repeated all the statements made on 8 July 2023. However even in statement recorded under Section 164, she has clearly stated that all the three children of Complainant were locked by Appellant and that her husband, who had gone to the Village with tiffin did not return. She has further stated that Appellant threatened all the labourers and their families not to come out of the huts. Thus, presence of Appellant at the spot of the incident, as well as he giving threats to other labourers is clearly vouched by the mother-in-law even in her statement under Section 164.

15) So far as the statement of husband of the Complainant recorded under Section 164 is concerned, he has *inter-alia* stated that he was locked inside the house by Appellant and that he alongwith his three children remained so locked during the whole night and that he was released at 6.00 a.m. on the following day.

16) So far as the statement of other witnesses residing in nearby hutments are concerned, it appears that all are not in sync about presence of

Appellant at the spot and he issuing threats to the labourers and their families. On one hand, there are statements of Sunil Chander Pawar, Draupada Sunil Pawar, Sadu Mahadu Gavit and Mali Sadu Gavit stating that Appellant had arrived at the Complainant's hut and had issued threats to other labourers. Some of the said witnesses have also stated about Appellant entering Complainant's hut and she shouting in loud voice. On the other hand, there are other witnesses viz. Ananta Ram Waghmare, Sau. Sangita Ananta Waghmare, Pandugar @ Pangu Kushiram Pawar, Laxmi Pandugar Pawar, Mangesh Santya Tandel, Sau. Manji Mangesh Tandel, who have stated in their statements that they did not witness Appellant arriving at Complainant's hut or issuing any threats to other labourers or their family members.

17) Be that as it may. Though there is some variance in statements of other labourers, Complainant, her husband and mother-in-law *prima facie* appear to be firm in their version about Appellant's presence in the hut at the relevant time coupled with husband being kept locked in Appellant's house.

18) Considering the overall circumstances of the case, it is difficult to *prima facie* hold at this stage that the prosecution will not be able to prove the charges accused against Appellant. The *modus operandi* adopted by Appellant, who *prima facie* appears to be a source of terror amongst the labourers, by repeatedly threatening and assaulting them and their family members as well as going to the extent of illegally detaining their children in his custody is also required to be borne in mind. I am therefore of the view that releasing Appellant on bail at this juncture would not be in the interest of justice, particularly considering safety of the Complainant, her family

members and other labourers who have given statements supporting Complainant's version. Complainant has been allegedly gangraped by four other unnamed persons, whose identity is still unknown. The learned Special Judge has rightly held that releasing Appellant at this stage would create threat of life to Complainant, her family members, as well as, the other labourers, who have given statements supporting her case. The learned Special Judge has also taken note of the fact that Complainant is consistent in her case about commission of gangrape upon her. Testimony of the Complainant is yet to be recorded. In such circumstances, it would not be appropriate to release Appellant on bail.

19) I therefore do not find this to be a fit case to interfere in the order passed by the learned Special Judge. The Appeal must fail and is accordingly **dismissed**. However, in the event, Appellant co-operates with early disposal of Special Case No. 131 of 2023 and if no substantial progress is made in the trial during next one year, Appellant shall be at liberty to apply for bail before the learned Special Judge.

20) Needless to observe that the observations made in the order are *prima-facie* and the Trial Court shall not be influenced by the same while deciding the case finally.

[SANDEEP V. MARNE, J.]