

CRIMINAL APPEAL NO. 766 OF 2017

V/s.

Dr. F.R. Shaikh, APP for the State.

20th December, 2017.

P.C.

The appellant in this appeal prays for bail. The C.R. No.I-107 of 2016 was registered with the Taluka Police Station, Malegaon, Tal. Malegaon, Dist. Nashik under Section 376(2)(K)(M)(N), 377,342,420,323,504,506,34 of Indian Penal Code & Section 3(1)(12), 3(1)(w)(i), 3(2)(5) of Atrocity Act against the appellant on the

complaint lodged by Ashvini Subhash Chavan-respondent no.2 herein.

2. The Prosecutor complains that appellant and other accused persons forced her to have physical relations and committed rape on her. The penal provisions of Section 376 of IPC and provisions the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 were registered by the Investigating Agency against the appellant. The Complainant made specific allegations that without disclosing his identity in respect of name and caste, the appellant maintained physical relations with the Complainant and forced her to maintain relations with other accused persons. She had narrated in detail conduct of appellant in her complaint made to police. The appellant applied for bail before the Additional Sessions Judge, Malegaon. By an order dated 23rd August, 2017, Addl. Sessions Judge-2, Malegaon rejected the bail application of the appellant.

3. Learned Counsel for the appellant submits that appellant is a married person. It is submitted that the Complainant had married

with the appellant by getting converted to Islam. Counsel submits that the allegations made are baseless. As the Complainant was not paid maintenance for two months, at belated stage as an after thought, the complainant had filed subject complaint. Counsel has referred to a NC report dated 7th June, 2016. It is submitted that prima-facie assessment of the material placed on record does not attract penal provisions nor provisions of Scheduled Castes and Tribes (Prevention of Atrocities) Act, therefore, applicant deserves to be released on bail. The contention that the appellant is suffering from HIV is also baseless as there is no clinical co-relation to the same.

4. Learned Prosecutor submits that statement of complainant under Section 164 Cr.P.C. was recorded wherein she has in detail narrated atrocities committed on her. She was forced by the appellant to maintain relations against her wish. She was physically assaulted and was raped by appellant and other accused persons. The main allegation by the Complainant is against the appellant who forced her to maintain relations with others. According to statement recorded

the Prosecutor submits that appellant suffers from HIV. Reference was made to one of the medical reports at page-34 of the paper-book wherein Medical Officer, Civil Hospital, Malegaon has expressed opinion after examining the Complainant. The opinion of Medical Officer in column 29 shows 'forceful vaginal intercourse' and 'attempt of anal intercourse'. The Prosecutor submits that taking into consideration heinous and seriousness of the offence, the appeal deserves to be dismissed.

5. Perused the record, relevant statements, medical reports and observations of the trial Court. The allegations made in the complaint disclose cognizable offence of serious nature. As to whether the complainant had married with the appellant by getting herself converted to Islam, whether on account of non-payment of monthly maintenance the complainant had filed criminal complaint; all such pleas are irrelevant as they cannot be considered at this stage. The trial Court would look into all such issues emerging from the evidence brought before the trial Court. Taking prima-facie assessment of

material placed on record, we find that Complainant had made serious allegations. The Police had collected material and submitted charge-sheet against the appellant. Therefore, it would not be appropriate at this stage to consider plea of innocence of the appellant for releasing him on bail.

6. We are not inclined to interfere in the matter. Appeal is dismissed.

(NITIN W. SAMBRE, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.