

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

CRIMINAL APPEAL No.750 OF 2018

Javed Munaf Shaikh,
Age 35 yrs., Occ. Labour,
R/o Devalfali, Tq. Nawapur,
Dist. Nandurbar.

... **Appellant.**

... **Versus** ...

1 The State of Maharashtra.

2 'X'

... **Respondents.**

...

Mr. S.A.S. Shaikh, Advocate for the appellant

Mr. S.J. Salgare, APP for the respondent No.1/State

Mr. Chandrakant B. Gore, Advocate respondent No.2

...

**CORAM : T.V. NALAWADE &
 SMT. VIBHA KANKANWADI, JJ.**

DATE : 5th DECEMBER 2018

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by original accused No.2 under
Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act and Section 439 of the Code of Criminal Procedure, 1973 for bail.

2 The present appellant has been arrested in Crime No.175/2018 registered with Nawapur Police Station, Tq. Nawapur, Dist. Nandurbar for the offence punishable under Section 376, 306, 354 r.w. 34 of the Indian Penal Code and Section 3(1)(w), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as Section 12, 4 and 8 of POCSO Act.

3 Prosecution has come with a case that the respondent No.2 filed First Information Report on 26.07.2018 stating that deceased victim was her daughter aged 16 years, informant was residing with the victim and son, victim was taking education in 11th Std., informant is serving as a Collection Agent with a private Financial Institute at Devalfali, Nawapur, Tq. Nawapur. She had worked on 21.07.2018 and came back to house around 8 to 8.30 p.m.. After having dinner she went to sleep and victim was studying. Informant could not come to know when she went out of house. Informant woke up when victim opened the door and came inside around 3.00 a.m., at that time she asked victim as to where

she had gone, victim informed her that her friend Mahesh Pawar had called her behind Shivaji High School. She told that since it is late night she would not come but when he threatened her that if she does not come he would defame her in the society and due to fear she went to meet him. Thereafter, around 1.30 a.m. Mahesh had come to leave her till Devalfali Chowk. At that time neighbours i.e. present applicant No.2 and another accused No.3 stopped her and at that time accused No.3 put hand in her waist and asked as to where she had gone and he had hugged her. At that time, the present applicant was making videography with his mobile. She rescued herself and then came to house. She was crying when she was informing it to mother. After giving advise, the informant told her to go to sleep. This fact was not informed by informant to anybody due to the fear of defame. On the next day she went to the house of accused No.3 and made inquiry about the shooting. He did not give anything to her nor passed of any information. But he told that they have the entire record as to with whom she had gone and what she has done. After coming back to house the informant asked to victim as to what she has done with the boy. At that time victim did not say anything to her. Informant then went for collection as usual around

4.00 p.m.. Victim was alone in the house. At about 8.00 p.m. when informant was returning home, she was collected by her brother and took her to Government Hospital. After reaching Government Hospital her brother informed that the victim has committed suicide by hanging. Informant lodged the report on 26.07.2018 stating that because of the fear of the accused persons, her daughter has committed suicide and the possibility of rape committed on her cannot be ruled out.

4 It will not be out of place to mention here that the investigation is complete and the charge sheet is filed before the Special Court. The application for regular bail filed by the present appellant came to be rejected by the learned Special Court stating that the act committed by the accused was with a criminal intent of sexual harassment to the minor victim and the minor victim could not bear the threats.

5 Heard learned Advocate Mr. S.A.S. Shaikh for the appellant, APP Mr. S.J. Salgare for the respondent No.1/State and learned Advocate Mr. Chandrakant B. Gore for the respondent No.2. Perused the copy of the charge sheet.

6 Perusal of the FIR would also clarify that as regards the present appellant was concerned, what was informed by the victim to her mother was that present appellant was shooting from his mobile, what accused No.3 was doing with the victim. There are no allegations of rape against the present appellant. It can also be seen from the Post Mortem Report that there was no sign of rape on the person of deceased. Taking into consideration this aspect what evidence has been collected is required to be considered. The accused has discovered his mobile, in which the alleged shooting was made. From the video clip, the transcript has been prepared. If we peruse the transcript, it can be at the most considered as moral policing by the accused. It is not in dispute that the victim had gone out of the house at night time and till 1.30 a.m. she was out of the house. From the transcript it appears that the accused had the knowledge that she had done the said act in the past also and it was noted by the accused and he was giving an understanding to the victim that she should not do such bad act at night time. The record does not show that any such action even by accused No.3 to put his hand around her waist was done or he had hugged her. There is a reference to this in the observations of learned Special Judge that it might be an act of child

pornography. Important point to be noted that there is no photography of alleged rape by accused No.1 on the victim. It is now alleged that because of the threat given by the present appellant the deceased had committed suicide. It is to be noted that she went at odd hours and then it is alleged that the accused No.1 has raped her. The possibility of because of her own act required to be told to mother she would have committed the suicide. From the record, it cannot be said at this stage that there is evidence to show that the present applicant had in any way abated the commission of suicide by the victim. Definitely it will take much time to stand the case for trial. Under such circumstance, the bail deserves to be granted. It will not be out of place further to mention that whatever observations have been made in this Judgment are the prima facie observations and the Trial Court need not get influenced by it at the conclusion of the trial. We, therefore, proceed to pass following order.

ORDER

1 The appeal is allowed.

2 The order made by the learned Special Judge, Nandurbar in Bail Application No.205 of 2018 dated 29.09.2018 is hereby set-aside

and the said application is allowed.

3 Appellant be released on bail on his furnishing P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) with one or more sureties of the like amount.

4 Bail before the Trial Court.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

agd