

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL APPEAL NO. 13 OF 2018

Virbhadra @ Irappa Shankar Raykoti
and another

... Appellants

Vs.

State of Maharashtra and another

... Respondents

Mr.Ritesh Thobde a/w Sagar Tambe, for Appellants

Ms.M.M.Deshmukh, APP for Respondent-State.

Mr.Vijaykumar R.Garad, for Respondent No.2.

CORAM : S. S. SHINDE &

MRS.MRIDULA BHATKAR, JJ.

Date : October 3, 2018.

P.C. :

This Appeal is filed against the order dated 3 January 2018 passed by the Additional Session Judge, Solapur thereby rejecting the Criminal Bail Application No.1336 of 2017, filed by the present Appellants-Accused.

2. The Appellants-Accused are prosecuted along with their brother who is the main accused in C.R. No.417 of 2017 which is registered with Akkalkot South Police Station, for the offences punishable under section 376, 313, 504, 506 r.w. 34 of the Indian Penal Code and under section 3(1), (w) (i) (ii), section 3(2) (Va) of the Scheduled Caste and Scheduled Tribes Act, 1989.

3. It is the case of the prosecution that the offence was registered on 6 December 2017 by the victim girl against the Appellant-Accused No.1 who is younger brother of the Appellants-Accused. The victim belongs to Scheduled Caste and Scheduled Tribes class. She was taking education in the college. The incident of sexual abuse has taken place in the year 2009 when she was in Standard X at that time. The main Appellant-accused has expressed his love for her and pressurised her to keep sexual relations with him. It is the case of the victim that she believed in him. He also promised her to marry and under that pretext he compelled her to have sexual intercourse with him. It is the case of the prosecutrix that the relationship went on and in the year 2012 she conceived and thereafter he got the foetus aborted in 2012. The relationship was going on till August 2017, however thereafter the main accused as per the case of prosecutrix lost interest in her. The Appellant-accused thereafter abused her, threatened her of life. Thereafter, main accused till 5 December 2017 did not marry her, hence she lodged complaint to the police station.

4. Pursuant to the said F.I.R, the offence was registered against principal accused and so also against these two Appellants-accused. The Appellants-accused have moved application for Anticipatory bail before the trial Court. The trial Court has granted interim bail by order dated 11 December 2017. However, at the time of hearing of Application finally, the trial Court has noted down in order dated 3 January 2018 that after granting interim protection, the Appellants-accused have committed offence by

threatening the prosecutrix and therefore, N.C. No.577 of 2017 was registered against the Appellants-accused, on 15 December 2017. Complainant has also filed affidavit in support of her N.C. The learned trial Court after considering this incident of N.C rejected the bail finally and hence, this Appeal.

5. The learned counsel for the Appellants-accused has submitted that the Appellants-accused have no role in the offence punishable under section 376 and so also the offences under the Atrocities Act. He submitted that at the most the Appellants-accused have committed the offence of criminal intimidation and under section 506(2) of the Indian Penal Code. He submitted that the Appellants-accused have no criminal record and they being brothers of the main accused, the prosecutrix has out of vengeance falsely implicated these Appellants-accused. It is submitted that they will abide all the conditions whatever imposed by this Court if Anticipatory bail is granted and appeal is allowed. Learned counsel appearing for the complainant prosecutrix – Respondent No.2 while opposing this Appeal has submitted that the learned trial Court has rightly given required weightage to the N.C recorded against these Appellants-accused. When they were granted ad-interim protection, Appellants-accused have abused the interim Anticipatory bail granted to them. The prosecutrix is from the scheduled caste /scheduled tribe class and Anticipatory bail is not to be granted to the Appellants-accused. Learned Prosecutor supported the order of rejection of the bail. There is no criminal antecedent against these Appellants-accused.

6. Perused the papers placed before us, the First Information Report and the impugned order. On careful perusal of the FIR and the papers and the submissions, it appears prima facie that there is no involvement of the Appellants-accused in the offence under section 376 and also offences under the Atrocities Act. The Appellants-accused have no criminal record under IPC or any other offences under any other law. Moreover we have taken into account the order dated 9 January 2018 passed by this Court. In the said order the Division Bench of this Court has while granting the interim protection observed as under :

'The First Information Report is lodged on the basis of the complaint of the first informant alleging therein that the main accused induced her to have sexual relations on the promise of marriage and thereafter refused to marry her.

The only allegation as against the Appellants and who are the brothers of the main accused, is that they threatened the first informant not to insist on marrying and extorting certain amounts. On these allegations, prima facie, there does not appear to be any material under section 14A (Section 3) of the S.C and S.T. Amendment Act 2015.'

7. It is to be noted that the incident of recording of N.C has taken place on 15 December 2017 and the bail application was rejected on that ground. Thereafter this Court has made these observations and again granted the interim protection in this Appeal seeking pre-arrest bail. The record shows that the Appellants-accused have not abused or misused the interim protection which was granted by this Court from January 2018 till

today. After considering the facts which are placed before us, prima facie we are of the view that this Appeal is to be allowed and they are entitled to pre-arrest bail as Appellants-accused have neither abused the bail nor have prima-facie committed offence under Atrocities Act and of rape. The police had completed the investigation and chargesheet is filed against the Appellants-accused, on 31 July 2018.

8. The order dated 3 January 2018 passed by the Additional Session Judge, Solapur in Criminal Appeal No.1336 of 2017 is hereby quashed and set aside. Learned trial Court to expedite the case preferably within nine months. The order dated 9 January 2018 is hereby confirmed with the following conditions -

- i) The Appeal is allowed.
- ii) The Appellants-Accused be released on their executing bail bond in the sum of Rs.10,000/- with one surety in the like amount. They shall not commit any offence, much less the offence for which they are prosecuted. The Applicant – accused shall not threaten the prosecutrix and shall not be in touch with her and the other witnesses.
- iii) The Appeal stands disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)

(S. S. SHINDE, J.)