

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

CRIMINAL APPEAL NO.1487 OF 2018

Mr. Narayan Kishanchand Hemnani Appellant
Age : 54 years, Occ.: Business
Daya Meher, Behind Water Tank,
Mahatma Nagar, Nashik,

Vs.

1. The State of Maharashtra
Thru' Gangapur Road Police Station,
Nashik.
2. Smt. Kristan Jothanpari Pachau
Age : Adult, Occ.: Business
Mona Lisa Cottage,
Nongkynrih, Laitumkhrah,
Shillong, East Khasi Hills,
Meghalaya – 793 003 Respondents

Mr. Niteen Pradhan a/w Mr. Aniket Nikam, a/w Mr. Filji Frederick
a/w Ms. Prateeti Thakar I/by F.F. & Associates for the Appellant.

Mr. S.S. Pednekar APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 19th December 2018

P.C.:

1 Heard the respective counsel.

2 This is an appeal under Section 14A of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

3 It is the case of the prosecution that on 30th October 2018, the complainant, Smt. Krishtan Jothanpari Pachau who was a resident of Nashik lodged a report at the police station alleging therein that she hails from Shillong (Meghalaya). She was married to Sanjay Tikamdas Mordani, who belonged to Sindhi caste. According to her, she is an aboriginal Mizo Sect. That on 28th September 2014, her husband had expired. She has to struggle for survival of her two daughters and one son. That Sindhi society had accepted the complainant into their society. She was well acquainted with her relatives such as Ramesh Tahelram Parwani. They had decided to reside permanently in Nashik. One of the friend of Ramesh Parwani namely Narayan Hemnani that is the present appellant happens to be the builder by profession and is into the business of constructing the houses. That they had offered a flat in one of his project to her husband during his lifetime. They had approved the building plans and then had decided to purchase flat number 502, admeasuring

2915 square feet at the rate of Rs.5,280/- per square feet. The token amount of Rs.5,00,000/- was paid to the builder. That during the period May 2013 to December 2013, an amount of Rs.40,00,000/- was paid to the builder in cash. During the intervening period, her husband had fallen ill and he succumbed to his illness on 28th September 2014.

4 She has further alleged in the F.I.R., that she had approached the present appellant and had requested him to execute the sale-deed in her favour. He evaded to oblige. She alongwith Mr. Parwani had approached him on several occasions and had requested him to execute the sale-deed or to refund the amount that was paid to him. That on 16th December, 2017 she had again visited the said site and upon enquiry, she had learnt that the appellant had created third party interest in the said flat, rather it was sold. When the appellant was confronted with the said fact, he had issued nine cheques of Rs.5,00,000/- on 11th September 2018. She had returned to Shillong and had presented the said cheques for encashment. She was informed by the bank authorities that the cheques were issued

from a dormant account. Thereafter the complainant was sure that she has been cheated, since it had transpired that the said account has been deactivated. The complainant had also learnt that several people have filed complaints/civil suits against the present appellant as he had not abided by the agreements executed in their favour. The complainant also named the said consumers that is Mr. Vinayak Waghmare, Anil Madhukar Patil, Robin Joseph and Anil Balaram Patil. Since the complainant wanted to return to Shillong, she had approached the appellant and had requested him to return the money since she has no time and due to paucity of funds, she would not be able to initiate legal proceedings against him. It is alleged that at that stage, the appellant had abused her by referring to her caste, more particularly by referring to her as “Adiwasi girl”. According to her, she had booked a flat in Zion Plaza and she has been cheated by the appellant and then also abused by referring to her caste.

5 On the basis of report, Crime No. 268 of 2018 is registered at Gangapur Road Police Station, Nashik, for the offences

punishable under Sections 420, 406, 504 read with 34 of Indian Penal Code and 3(1)(r) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6 The appellant was arrested by Gangapur police station on the very next day. He was produced before the Additional Sessions Judge, Nashik on 31st October 2018. The investigating agency had sought for P.C.R.

7 The learned Sessions Judge had perused the papers of investigation, and also the copies of all cheques and the agreements given by the complainant to the police at the time of lodging of F.I.R. It prima facie appears that the learned Sessions Judge was of the opinion that there was a civil transaction between the complainant and the appellant and therefore P.C.R. would not be necessary. It was demonstrated that the cheques are issued in the name of Mr. Parwani from Mumbai, who happens to be the professional money lender and that it was against the amount advanced by him to the builder. The appellant had fraudulently denied that he had issued

the cheques in favour of the present complainant. It is surprising that the appellant also had the audacity of denying the whole transaction with Mr. Mordani. Learned Sessions Judge has gone into the issue as to whether the complainant has been able to prove that she is legally wedded wife of Sanjay Mordani. In fact that was irrelevant to the case in hand.

8 The appellant has been in judicial custody for almost 48 days. On 13th December 2018, this court had issued notice to respondent no.2 returnable on 19th December 2018. The investigating officer had conveyed to the complainant that the notice is issued by the High Court. The complainant has replied the said communication to Mr. R.R. Patil, who happens to be the investigating officer in the present case that she is 48 years old. She is in shock due to sudden demise of her husband. That she has to support three children. That due to paucity of funds, she cannot travel from Shillong to Mumbai to oppose the grant of bail in favour of the appellant and travelling by train would be time consuming. The letter sent by the complainant to Mr. R.R. Patil, investigating

officer shall be included in the papers of investigation.

9 It is a pathetic situation, however, the complainant has shown courage to approach the police and lodged a report against the builder. Learned counsel, Mr. Pradhan submits upon instructions, that the family of the appellant would show compassion towards the family of the complainant and would make every effort to repay her. It is also submitted that the family of the appellant and the appellant himself would personally take every effort to repay the amount of Rs.40,00,000/- to the complainant by 30th June 2019. It is, in these circumstances, the appellant deserves to be enlarged on bail. It is submitted on behalf of the appellant that to express bonafides, the appellant would deposit an amount of Rs.2,00,000/- in her account by R.T.G.S. on/or before 30th December 2019.

10 The investigating officer shall send a copy of this order to the complainant and request her to give her bank details and cellphone/landline numbers for the purpose of communication.

11 The investigating officer shall inform the complainant that the money will be directly deposited in her bank account through RTGS and for that purpose, she need not travel from Shillong to Mumbai or Nashik.

12 Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the appellant has made out a case for grant of bail. Hence, the order :

ORDER

- i) The appeal is allowed and stands disposed of.
- ii) The appellant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iii) The appellant shall be released on cash bail for a period of six weeks, within which he shall furnish solvent surety before the Sessions Court at Nashik to the satisfaction of the Court.
- iv) The appellant shall continue to deposit the amount in instalments and shall pay Rs.40,00,000/- (Rupees Forty Lacs Only) by 30th June 2019.

v) The investigating officer shall keep a track of the amount that is being deposited and the appellant shall inform the investigating officer about refund of amount.

vi) The appellant shall report to the investigating officer on 12th January 2019, 31st January 2019 and thereafter on 5th (fifth) of each month till 30th June, 2019.

vii) The appellant shall deposit 60% of the total amount by 30th March 2019.

viii) Upon failure to deposit an amount of Rs.2,00,000/- (Rupees Two lacs) on/or before 30th December 2018 and pay the whole amount by 30th June 2019, the prosecution would be at liberty to file an application seeking cancellation of bail.

ix) Parties to act on authenticated copy of this order.

(*Smt. Sadhana S. Jadhav, J*)