

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL APPEAL NO.371 OF 2019

Laxmibai w/o. Surajsingh Thakur,
Age 24 years, Occ. Labour,
R/o. Guru Nagar, Nanded,
Tq. and Dist. Nanded.

.. APPELLANT.

VERSUS

1] The State of Maharashtra
through Police Station Vimantal, Nanded,
Tq. Nanded, Dist. Nanded.

2] Sushila w/o. Kalyan Gajbhare,
Age 42 years, Occ. Household,
R/o /Guru Nagar, Nanded,
Tq. and Dist. Nanded.

.. RESPONDENTS.

Advocate for Appellant : Mr. Bharat N. Gadegaonkar
APP for Respondent No.1: Mr. K.D. Munde.
Nobody appeared for respondent No.2 though served.

CORAM : K.K. SONAWANE,J.

DATE : 30TH APRIL, 2019.

JUDGMENT:

Heard. Admit. Matter is taken up for adjudication on
merit with consent of both sides.

2] This appeal is directed against the impugned order dated 1st April, 2019, passed by the learned Additional Sessions Judge, Nanded thereby rebuffing the relief of regular bail to the appellant in Crime No.252 of 2018 registered with Police Station, Vimantal, Nanded i.e. Special (Atrocities) Case No. 33 of 2018, for the offence punishable under Sections 452, 354, 323, 506 r/w. 34 of the IPC and under Section 8 and 17 of the POCSO Act as well as Section 3(1)(w)(1) of the SC and ST (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989, for sake of brevity). The appellant preferred the present appeal by invoking remedy under Section 14A of the Act 1989 to redress her grievances.

3] The prosecution case in nutshell is as under :-

It has been alleged that on 20th October, 2018 the First Informant Sushila approached to the police of Vimantal Police Station, Nanded and filed the report that she is residing with her husband, daughters Sonal and Rani, in the locality of Guru Nagar, Nanded. The appellant and other co-accused are also resident of the same locality. When the complainant and her daughter Sonal were at home on 19th October, 2018, in the evening at about 7.00 p.m., the appellant and her brothers Pawan Amarsingh Thakur, Ganesh Amarsihgh Thakur all barged into the house of first informant, and insisted for marriage of her daughter Sonal with Pavan Amarsingh Thakur - the brother of the present appellant.

They also gave threats of dire consequences in case the first informant attempted to perform the marriage of her daughter Sonal with any other person. There was altercation between them and during exchange of words the present appellant/accused exhorted the brother Pavan Thakur to take daughter of complainant Sonal with him. There was jostling in between the daughter Sonal and accused. The appellant and her brother had given threats to life in case first informant filed police complaint against them. Eventually, the first informant approached to the police and filed report. Pursuant to FIR police registered the crime bearing No. 252 of 2018 under Section 452, 354, 323,506, r/w. 34 of IPC and also Section 8 and 17 of the POCSO Act, as well as Section 3(1)(w)(1) of the Act of 1989 and set the penal law in motion.

4] I.O. visited to the spot of incident and drawn panchanama of the scene of occurrence. He recorded statements of witnesses acquainted with the facts of the case. I.O. apprehended the accused for the sake of investigation. I.O. availed custodial interrogation of the present appellant and now she is in Magisterial custody remand. Despite efforts, the whereabouts of accused Ganeshsingh Thakur could not be traced out. At last, I.O. filed charge sheet against all accused showing one of the accused absconding under Section 299 of Cr.P.C.

5] Thereafter, the appellant/accused preferred the application under Section 439 of Cr.P.C. before the trial court to admit her on bail pending appeal. The learned trial court considered the circumstances on record, but did not favour the appellant to enlarge her on bail. The learned trial court expressed apprehension about the tampering of evidence and threats of life to the family members of the first informant in case the appellant is released on bail. Therefore, the learned trial court refused to nod in favour of the appellant and rejected her application for bail filed under Section 439 of Cr.P.C. The impugned order passed by the learned trial court is the subject matter of present appeal.

6] The learned counsel for the appellant fervidly contends that the entire investigation has already been completed and I.O. also filed charge sheet before the learned trial court. The appellant is in jail since her arrest on 20.10.2018. The appellant is 24 years old lady. She has not committed any crime but she has been falsely implicated in this case.

7] The learned APP raised the objection and submits that the charges against the appellant are serious in nature. The learned trial court appreciated the overt acts of the appellant and refused to admit her on bail. There is also a possibility of tampering with the evidence of prosecution. The first informant appeared before the

learned Sessions Judge, and raised objection that in case the appellant is released on bail, there may be an possibility of threats to the life of first informant and her family members. The trial court considered all these factual aspects and rejected the application for grant of bail filed by the appellant.

8] Having given anxious consideration to the rival submissions, I find that the appellant/applicant deserves to be released on bail pending trial. In view of nature of subject matter and the allegations nurtured on behalf of prosecution against the appellant, I do not find any propriety to curtail the valuable liberty of the applicant for the reasons of tampering of evidence or apprehension to the life of complainant. It is also worth to mention that the entire investigation has already been completed. I.O. has filed charge sheet before the learned trial court. The appellant is the female member and, therefore, it is preposterous to appreciate that there would be a threat to the life of first informant and her family members in case the appellant is released on bail. It is the rule of law that there should not be any pre-trial incarceration by way of punishment. The charges against the appellant are yet to be proved and she is presumed to be innocent till proving her guilt. In such circumstances, priority is essential to be given to her liberty, being a fundamental right guaranteed under the constitution of India.

9] The learned trial court did not appreciate the circumstances on record in its proper perspective and given much weightage to the objection raised on behalf of first informant, by her suo-motu appearance before the learned trial court. In view of circumstances on record and the over act attributed to the appellant in this crime, I do not find any impediment to allow the appeal.

10] Hence, the appeal stands allowed. The impugned order dated 1.4.2019 passed by the learned Additional Sessions Judge, Nanded in Special (Atrocities) Case No. 33 of 2018 thereby rejecting the application for bail filed by the appellant is hereby quashed and set aside. The application for bail filed under Section 439 of Cr.P.C. by the appellant is hereby allowed. The appellant/applicant be released on bail on her furnishing the P.R. Bond in the sum of Rs.20,000/- (rupees twenty thousand) with one surety of like amount. It is stipulated that the appellant/applicant shall not, directly or indirectly, indulge in the activities of tampering with the evidence of prosecution witnesses and shall attend the proceeding before the learned trial court regularly. Bail before the learned trial court.

11] Accordingly, the appeal stands disposed of in above terms. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-