

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

CRIMINAL APPEAL NO. 709 OF 2019

Nitin s/o. Dhnyaneswar Mandole,
@ Nitin s/o. Dhnyaneswar Shinde,
Age : 41 years, Occu. : Service,
R/o. : Forest Colony, Deopur, Dhule,
A/P B-74, Wrindawan Park, Lathi Road,
Amareli, Guj Rath State.

... APPELLANT
(Original Accused No.1)

VERSUS

1. The State of Maharashtra,
2. Jyoti w/o. Nitin Mandole,
Age : 36 years, Occup. Service,
R/o : 71, Utkarsh Colony,
Sakri Road, Dhule, Mob.No.9421532064,
A/P Head office of M.S.E.D.C.L., Mumbai.

... RESPONDENTS
(Original complainant)

...

Mr. Ravindra B. Ade, Advocate for appellant.
Mr. M. M. Nerlikar, APP for respondent No. 1.
Mr. V. H. Dighe, Advocate for respondent No.2.

...

**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 08th AUGUST, 2019.

ORAL JUDGMENT :-

(PER : K. K. SONAWANE, J.)

Heard. **Admit.** The present appeal is taken up for final hearing on merit with the consent of both sides.

2. Being aggrieved by the impugned order of rebuffing the relief to admit the appellant-accused on bail under Section 439 of the Code of Criminal Procedure, 1973, in a Crime No. 129 of 2015 registered under Sections 498-A, 323, 504, 506, 494 read with Section 34 of the Indian Penal Code (IPC) and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (Hereinafter,

referred as "Act of 1989", for the sake of brevity), rendered by the learned Additional Sessions Judge, Dhule, below application (Exhibit-17) in Special Case No. 10 of 2019, the appellant preferred the present appeal to redress his grievances.

3. It has been alleged that the first informant Jyoti Mandule initiated the private complaint before the learned Magistrate at Dhule for penal action against the appellant and others for the offence punishable under Section 498-A, 323, 494, 313, etc. of IPC and Section 3(1)(x) of Act of 1989. Pursuant to order passed by the learned Magistrate under Section 156(3) of Cr.P.C., the police of Dhule City Police Station, District Dhule, registered the Crime No. 129 of 2015 and set the penal law in motion against appellant and others. According to first informant, she is legally wedded wife of the appellant-accused Nitin and their marriage was solemnized on 23-11-2007. It was the inter-caste marriage. The first-informant belongs to Scheduled Caste community, whereas, the appellant is from Dhobi community. It has been contended that after marriage, complainant joined the company of husband-appellant for cohabitation. But, there was marital discord in between the spouses. They casts allegations against each other. It has also been alleged that appellant-accused insisted the complainant for termination of her pregnancy. She has also ventilated the grievances about the mental and physical maltreatment and harassment to her while she was cohabiting with him and other inmates of the matrimonial home. There was demand of money for purchasing the immovable property. Eventually, the complainant approached to the learned Magistrate for penal action against the appellant-husband and other inmates of her matrimonial home.

4. Pursuant to FIR, Police registered the crime, Investigation Officer (IO) recorded statements of witnesses acquainted with facts of the case. The IO also collected relevant documents. After completion of procedural formalities, the IO preferred charge-sheet against in all ten accused including present appellant in this case. Pending the proceeding before learned Special Judge, Dhule, the appellant-accused preferred the application to enlarge him on bail. The learned Sessions Judge appreciated the factual aspects of the matter and arrived at the conclusion that the appellant-accused is not entitled to release on bail and accordingly passed the impugned order, which is under challenged in this appeal.

5. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the entire relevant documents produced on record including the charge-sheet as well as factual aspects of the matter.

6. Learned counsel for the respondent-complainant raised the objections and submits that the appellant-accused is the husband of the complainant. He mentally and physically maltreated and harassed the complainant-wife on her caste as well as for demand of money. Moreover, during subsistence of first marriage, the appellant ventured to perform second marriage with one lady, who has also begotten two children during wed-lock from the appellant-husband. Learned counsel also drawn attention of this Court towards conduct and demeanor of the appellant. He contends that the appellant clandestinely proceeded to change his surname in the gazette from "Mandole" to "Shinde" and remained absconding since the day of incident under the guise that he is not the person as "Mandole", but his name is "Shinde". The

appellant has also obtained the passport and there is every possibility of his going to abroad, which may cause delay in trial. Moreover, it may frustrated the purpose of matrimonial proceeding filed against him.

7. It is to be noted that the appellant-accused came to be arrested in this crime on 30-01-2019 for the offence punishable under Sections 498-A, 323, 504, 506, 494 and 313 of IPC and Section 3(1)(x) of Act of 1989. The IO has complied with entire formalities of investigation into the crime and filed the charge-sheet. It is pending before the learned Special Judge vide Special Case No. 10 of 2019. Taking into consideration the nature of allegations and the evidence collected on behalf of prosecution in this matter, we do not find any propriety to keep the appellant-accused behind bars for the sake of trial. It is the rule of law that there should not be pre-conviction incarceration by way of punishment. The charges levelled against the appellant-accused is to be proved during the course of detail trial. In such circumstances, it would unjust and improper to curtail the valuable liberty of the appellant-accused for the sake of trial. However, in regard to apprehension of his absconding into the matter as well as possibility of his going to abroad, etc. The reasonable conditions may be imposed on him. It cannot be put into controversy that the bail in such a crime is a rule and jail is an exception. Therefore, we do not find any impediment to allow the application and to release the appellant-accused on bail on certain terms and conditions.

8. Accordingly, the Criminal Appeal stands allowed. The impugned order of rejecting the bail application filed by the appellant-accused Nitin s/o. Dhnyaneswar Mandole @ Nitin s/o. Dhnyaneswar Shinde, passed by the learned Sessions Judge, Dhule, dated 08-07-2019

below application (Exhibit-17) in Special Case No. 10 of 2019 is hereby set aside and quashed. He be released on bail on furnishing PR Bond of Rs.30,000/- (Rs. Thirty Thousands Only) with one or more surety of like amount. It is stipulated that the appellant shall not directly or indirectly indulge into the activities of tampering with the evidence of prosecution witnesses and shall not commit such similar offence pending trial. He shall not leave the India without proper permission of the concerned trial Court. It is further stipulated that the appellant shall surrender his passport before the learned trial Court prior to his release on bail. He shall also attend the proceeding before the learned trial Court regularly, failure to which, it is open for the learned trial Court to take requisite action against him for his custody into the matter.

9. The present Criminal Appeal stands disposed of in above terms.
Rule made absolute. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

rrd.