

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.108 OF 2019

CHETAN ATMARAM PATIL

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Rajesh Kumar, Advocate for the Appellant.

Ms.Megha Bajoria, Appointed Advocate for Respondent No.2.

Mrs.S.V.Sonawane, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 6th JUNE 2019

JUDGMENT :

1 Heard. Admit. Heard finally, by consent of parties.

2 By this appeal, the appellant/accused is challenging the order dated 3rd December 2018 passed by the learned Special Judge, Thane, thereby rejecting the application under Section 439

of the Code of Criminal Procedure filed by the appellant/accused in Crime No.171 of 2018 for offences punishable under Section 376(2)(n) of the Indian Penal Code as well as under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered with Police Station Wada.

3 Heard the learned counsel appearing for the appellant/accused. He argued that bare perusal of the First Information Report (FIR) lodged by the respondent no.2/First Informant shows that there is no iota of evidence to infer commission of the crime in question by the appellant/accused. He submitted that whatever was happening between the parties was with free consent and on own volition of the prosecutrix.

4 Ms.Bajoria, the learned advocate appointed to represent the respondent no.2/First Informant vehemently opposed the appeal by contending that on false pretext of marriage, the appellant/accused has sexually exploited the respondent no.2/First Informant for several years. Her consent

was not free consent, and therefore, the appellant/accused is not entitled to be released on bail.

5 The learned APP supported the impugned order by contending that the offence is serious, and therefore, the appellant/accused is not entitled for bail.

6 We have considered the submissions so advanced and we have also perused the charge-sheet.

7 The crime in question is registered on the basis of the report lodged by respondent no.2/First Informant with Police Station Wada on 28th June 2018. Averments made by the respondent no.2/First Informant, who happens to be fully grown adult female, aged about 25 years, are to the effect that, on the pretext of marriage, the appellant/accused had indulged in sexual relations with her from the year 2012 to the year 2017. The FIR further reveals that the respondent no.2/First Informant and the appellant/accused got acquainted with each other in the year

2010 as they were employees on contract basis and working at Panchayat Samiti. The respondent no.2/First Informant averred that she was visiting house of the appellant/accused as well as house his sister. She even stayed at the house of the appellant/accused along with her parents. According to her version, the appellant/accused indulged in sexual relations with her at his house, at her workplace, as well as at the lodge on several occasions. She lodged report because the appellant/accused and his relatives refused the proposal for marriage.

8 Considering the age of the respondent no.2/First Informant as well as the sequence of events unfolded by her, in her FIR lodged after several years, we, prima facie, feel that the case in hand is of consensual sex between two adult persons. The appellant/accused is undergoing pre-trial detention from 30th June 2018. Considering the nature of evidence available against him, his further pre-trial detention is not warranted and he is entitled to be released on bail.

9 Perusal of the impugned order shows that the learned Special Judge has not considered the material collected by the Investigator in proper perspective and held that there is possibility of the appellant/accused fleeing from the course of justice and that he had given assurance of marriage to the victim girl.

10 We are unable to endorse such reasoning for further continuation of pre-trial detention of the appellant/accused. Therefore, the order :

ORDER

- i) The appeal is allowed.

- ii) The order dated 3rd December 2018 passed below Exhibit 3 in Sessions Case No.303 of 2018 by the learned Special Judge, Thane, thereby rejecting the application for release of the appellant/accused on bail, is quashed and set aside.

- iii) The application for grant of bail filed by the appellant/accused is allowed.

- iv) The appellant/accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- v) As a condition of this order, the appellant/accused shall not extend any threat, promise or inducement to the witnesses cited by the prosecution.
- vi) The appellant/accused should not contact the prosecutrix in any manner.
- vii) The appeal is disposed of accordingly.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)