

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 365 OF 2019

Manisha Sashikant Kamble. ...Appellant.

V/s.

The State of Maharashtra & anr. ...Respondents.

Mr. Subhash Jha I/b. Law Global, Advocates for appellant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 24, 2019.

P. C. :

1 Heard the learned Counsel for the appellant and the learned APP for State.

2 This is an appeal filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order passed by the Additional Sessions Judge, Islampur dated 1/2/2019, thereby refusing to grant bail in favour of the appellant in Crime No. 82 of 2018 registered at Kurlap Police Station, Sangli for offence punishable under section 376(2)(n), 376(c), 376(3), 376(2)(d)(f)(k), 354-A, 506 read with 34 of the Indian Penal Code and Section 3(1)(w), 3(2)(v), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and section 3/4, 5/6, 7/8, 9/10 of the Protection Children from Sexual Offences Act, 2012.

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3 On 25/9/2019 the lady PSI officiating at Kurlap Police Station received a confidential letter in her name. It was written by the inmates from Minai Ashram Shala, Kurlap. The contents of the letter were shocking to the conscience of the lady PSI. It was stated that the offender chairman of the said society Mr. Arvind Pawar had sexually assaulted more than 32 to 40 girls. That he was helped by the present appellant. That she was leading the girls to his office and then he used to ravish the said girls. The lady PSI was requested by those victim girls, that she should not disclose about the said letter to anybody but conduct a discreet inquiry and then take appropriate action, since the accused are shrewd persons and they would become aware of the action being taken and would harass the girls.

4 Ms. Pallavi Chavan, on the basis of the said letter had decided to hold a discreet inquiry. She had discussed the said matter with the Sub-Divisional Police Officer, Islampur by showing him the letter and then had asked the District Women and Child Development Officer and Project Officer, Walva to remain present in the said office of the society on 26/9/2018. She had recorded the statements of more than 10 to 12 girls and each one had the same grievance. She was satisfied that the principal offender Arvind Pawar is being abetted by the present

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appellant who was shown to be working as a cook in the said society. Each victim had disclosed to Ms. Chavan that the present appellant used to lure the girls with sweet talk, take them to the room of Arvind Pawar, leave them there and after the incident, she used to threaten the girls that in the eventuality they had even attempted to disclose the said incident to anybody, they would face dire consequences, so much that Arvind Pawar could dismiss them from school on false ground, spoil their future and take action against them in such a manner that they would be left with no defence.

5 Pursuant to the registration of FIR, the appellant was arrested on 27/8/2018. Her application seeking pre-arrest bail was rejected by the learned Sessions Judge. Hence, the present appeal under section 14 A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6 The learned Counsel for the appellant vehemently submits that firstly, the appellant is working only as a cook and is not in a position to influence or instigate or abet the offence to the founder chairman of the society. Secondly, she has a disabled person and thirdly, that she herself belongs to scheduled caste and therefore, according to the learned Counsel, she cannot be prosecuted under the provisions of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7 The learned APP submits that although the appellant is working as a cook, she is in fact, the officer bearer of the said society. Her name is shown as one of the office bearer of the society in the schedule annexed to the proceedings before the Charity Commissioner as well the book of proceedings of the said Society. The contention that she herself belongs to scheduled caste and therefore, cannot be prosecuted under the provisions of Atrocities Act need not be taken into consideration as the principal offence alleged against the appellant is under section 376(2)(n)(c) of the Indian Penal Code. It is true that the offence alleged against the principal offender would be section 376(C) of the Indian Penal Code. Explanation-3 to Section 376(C) reads as follows :

Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Hence, it can be said that the children were under the supervision of both the offenders.

8 Upon perusal of the statements of the victims, it is more than clear that the present appellant used to lead minor girls to the office/home/chamber of accused No.1 knowing fully well that he has asked the appellant to bring the girls in order to satisfy his sexual lust. She not only led the girls custody and the wises of the accused No. 1 but she brought back in the dormitory and warned them of dire consequences in the eventuality they disclosed to anybody. This act by itself would indicate that the appellant herein was fully aware of the purpose for which she was taking the girls to the original accused No. 1. The offence with which the present appellant could be charged is the one under section 107, thirdly of the Indian Penal Code which reads as follows :

107. Abetment of a thing.—A person abets the doing of a thing, who—

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

The Explanation is as follows :

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

Facilitation amounts to abetment and section 109 of the Indian Penal Code reads as follows :

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109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

9 The girls admitted in the said school belong to lower economic strata of the society. That the society was established with the purpose of imparting the primary, medium and Higher education to girls, to give them vocational training in order to make them independent in life, to make provision for education to the children belonging to the Scheduled Tribes and nomadic tribes, disabled, deaf and dumb and provide a residential education to the children belonging to nomadic tribes. The minor girls were vulnerable victims. The accused have taken advantage of their castes and class. The atrocities meted out to the minor victims had reached a boiling points and therefore, the girls were constrained to write a letter to a sensitive lady police officer requesting her to conduct a discreet enquiry and not to disclose their names till sufficient material is collected against the accused persons. In view of the above discussion, the appellant does not deserves to be enlarged on bail.

10 Learned Counsel for the appellant has placed implicit reliance

upon the Judgment of the Hon'ble Apex Court in the case of **Masumsha Hasanasha Musalman v/s. State of Maharashtra reported in (2000) 3 SCC 557**, wherein Hon'ble Apex Court has held as follows :

To attract the provisions of [Section 3\(2\)\(v\)](#) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under [the Indian Penal Code](#) is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under [Section 3\(2\)\(v\)](#) of the Act arises.

10 In the present case, the gravity of the offence committed under the Indian Penal Code needs to be taken into consideration irrespective of the fact that all the victims are also belonging to a scheduled caste and they were admitted in the Ashram School with a noble cause of upliftment of the children belonging to the scheduled caste and assimilating them with upper castes. The appellant has been insensitive and has subjected the victims belonging to scheduled castes to be a prey of the lust of the original accused No. 1. Hence, the very fact that the victim belongs to the scheduled castes would by itself attract the provisions of the said Act.

11 The learned Counsel has emphasised that it is attracted only when the accused who is not a member of the scheduled castes or

scheduled tribes happen to commit an offence under the Indian Penal Code punishable with imprisonment for 10 years or more. In the present case, it appears that after the act was committed by the principal offender, the present appellant used to threaten the victims to keep their mouth shut and had constrained them from complaining about the same to their parents. All the victims have primarily blamed the appellant for making their life miserable as it was she who was taking the girls to the accused No. 1.

12 In view of the above, the appellant does not deserves to be enlarged on bail during the pendency of the trial. Hence, the appeal being sans merits stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]