

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.866 OF 2018

SATYWAN @ SATISH VITTHAL PAWAR)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Tushar Narayan Sonawane, Advocate for the Appellant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Shankar Katkar i/b. Ms.Manisha Devkar, Advocate for Respondent No.2.

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

DATE : 10th APRIL 2019

JUDGMENT : (PER : A. M. BADAR, J.)

1 By this appeal, the appellant/accused is challenging the order dated 26th June 2018 passed by the learned Special Judge and Additional Sessions Judge, Pandharpur, thereby

rejecting his claim for anticipatory bail in Crime No.32 of 2018 registered at the instance of the respondent no.2/First Informant for offences punishable under Section 376(2)(i), 452 and 506 of the Indian Penal Code as well as under Sections 3(1)(12), 3(1)(5)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, with Police Station Pandharpur Rural.

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

3 The learned counsel for the appellant/accused drew our attention to the First Information Report (FIR) lodged by the respondent no.2/First Informant and argued that even if the averments made in the FIR are taken as it is, no offence of atrocity is made out and the FIR itself reflects consensual sexual relations between the appellant/accused and the respondent no.2/First Informant. He, therefore, submits that, custodial interrogation of the appellant/accused is not warranted.

4 As against this, the learned counsel appearing for the respondent no.2/First Informant opposed the application by contending that after registration of the crime, the appellant/accused as well as his uncle are threatening the respondent no.2/First Informant and her family members for withdrawing the complaint. On 17th June 2018, when the husband and father-in-law of the respondent no.2/First Informant were at their house, the appellant/accused threatened her husband and asked him to instruct the respondent no.2/First Informant to withdraw the FIR. This incident was reported to police and non-cognizable case came to be registered.

5 The learned APP opposed the appeal by contending that offences alleged against the appellant/accused are serious and in view of bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the application itself is not maintainable.

6 We have considered the submissions so advanced and also perused the record made available, including the FIR lodged by the respondent no.2/First Informant on 4th June 2018 against the appellant/accused. The FIR itself makes it clear that the respondent no.2/First Informant is a married lady, aged about 25 years, residing with her husband, parents-in-law and children at Village Khedbhalavni in Pandharpur Taluka. As per her averments in the FIR, one to one and a half months prior to lodging the FIR, the appellant/accused contacted her at the bank of Bhima river and insisted her that he wants to talk with her. She refused. Thereafter, at about 1.00 p.m. of that day, the appellant/accused came to her house and dropped a cell phone at her house. He, then, called the respondent no.2/First Informant on that cell phone but she did not talk with him on that cell phone. Thereafter, in the night hours, at about 8.00 p.m., the appellant/accused came to her house and committed rape on her. She did not disclose the incident to anybody. Subsequently, the appellant/accused used to contact her telephonically and used to

request her to meet him. It is further averred in the FIR that at about 10.30 p.m. of 29th May 2018, when she was talking with the appellant/accused on the cell phone, all of a sudden her husband came and snatched the cell phone from her hand and questioned her as to with whom she was talking. She disclosed the fact that she was talking with the appellant/accused. It is further averred in the FIR that, then, husband of the respondent no.2/First Informant assaulted her, called her relatives and sent her back to her parental home. Thereafter, she was called to her matrimonial house on 1st June 2018 and upon insistence, she disclosed the true facts to her husband and then she lodged the report.

7 It is reflected from the FIR that the respondent no.2/First Informant was not residing alone in the house. Her parents-in-law as well as husband and children were residing with her. The FIR makes it clear that the respondent no.2/First Informant used to communicate with the appellant/accused on the cell phone given by him. Even on the late night hours of 29th May 2018, she was stealthily speaking with the appellant/accused,

when all of a sudden her husband caught her red handed and questioned her. Even prior to that, she used to talk with the appellant/accused telephonically. This fact drawn from the FIR makes it clear that whatever relation the respondent no.2/First Informant was having with the appellant/accused were prima facie consensual.

8 So far as offences alleged under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are concerned, no prima facie case is made out in that regard. It cannot be said that alleged sexual relations were without recipients consent. In this view of the matter, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand.

9 The learned Special Judge, however, erred in holding that though bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand, the appellant/accused is not

entitled for anticipatory bail, as investigation may be hampered because of his enlargement on anticipatory bail. We are unable to endorse this finding as custodial interrogation of the appellant/accused, considering the nature of evidence available against him, is not warranted. Therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 26th June 2018 passed by the learned Special Judge and Additional Sessions Judge, Pandharpur, below Exhibit 1 in Criminal Bail Application No.358 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.32 of 2018 registered with Pandharpur Rural Police Station, at the instance of respondent no.2/First Informant, the appellant/accused 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) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused should co-operate the Investigating Officer and attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation.
- vii) The appellants/accused should not contact the respondent no.2/First Informant or her relatives in any manner, whatsoever.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)