

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.750 OF 2017

1) CHARULATA RAJENDRA CHAVAN)
)
 2) RAJENDRA VASANTRAO CHAVAN)...APPELLANTS

V/s.

1) THE STATE OF MAHARASHTRA)
)
2) VINAYA SHAILENDRA SHINDE)...RESPONDENTS

Mr.Satyavrat Joshi, Advocate for the Appellants.

Mr.S.R.Phanse, Appointed Advocate for the Respondent No.2.

Mrs.M.M.Deshmukh, APP for the Respondent - State.

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

DATE : 10th APRIL 2019

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

1 By this appeal under Section 14A of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,

the appellants/accused persons, who are parents of the main accused, are challenging the order dated 31st August 2017 passed by the learned Special Judge, Kolhapur, below Exhibit 1 in Criminal Bail Application No.491 of 2017, thereby rejecting their claim for grant of anticipatory bail in Crime No.269 of 2017 registered at Rajarampuri Police Station, Kolhapur, at the instance of respondent no.2/First Informant for offences punishable under Sections 376, 384, 379, 323 and 506 of the Indian Penal Code as well as under Sections 3(1)(10)(11)(12) and (15) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 The learned counsel appearing for the appellants/accused persons argued that the appellants/accused persons are father and mother of the main accused in the subject crime, who has been granted anticipatory bail by this court vide order dated 9th April 2019 in Criminal Appeal No.1288 of 2018. He, further,

argued that, offence of atrocity is not made out, as the incident is not shown to have taken place in a public view. The learned counsel further argued that son of the appellants/accused persons, who was a child, was sexually molested by the respondent no.2/First Informant and for that act, Crime No.81 of 2017 is registered against her with Rajarampuri Police Station, Kolhapur, at the instance of appellant/accused no.1 Charulata Rajendra Chavan, who happens to be mother of the main accused.

3 As against this, the learned counsel appearing for the respondent no.2/First Informant opposed the appeal by contending that the offence alleged is serious and the application for anticipatory bail is not maintainable. Similar contention is raised by the learned APP appearing for the State.

4 We have considered the submissions so advanced and perused the material placed on record. The subject crime is registered against the appellants/accused persons as well as their son, at the instance of the respondent no.2/First Informant on 17th

August 2017. As per the First Information Report (FIR) lodged by the respondent no.2/First Informant, who happens to be a married lady, aged about 33 years, residing with her husband and two children, in the year 2015, the main accused (son of the appellants/accused persons) took her obscene photographs stealthily and by threatening to publish those photographs, called her at his house and workshop and then subjected her to rape. It is further averred that gold ornaments were extorted from the respondent no.2/First Informant by the son of the appellants/accused persons. So far as the appellants/accused persons are concerned, it is averred that they had given casteist abuses to her and warned her not to entice their son (the main accused in the subject crime).

6 So far as the appellants/accused persons are concerned, the incident of casteist abuses or insult as well as intimidation to the respondent no.2/First Informant, who belongs to the scheduled caste, is not shown to have taken place at any place within a public view and as such, bar of Section 18 or 18A of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. In this view of the matter, custodial interrogation of the appellants/accused persons is not at all warranted, considering the role alleged to them. The learned Special Judge has erred in not considering the material collected by the Investigating Officer in proper perspective. The learned Special Judge, by holding that there is substance in the complaint, was pleased to reject the application for anticipatory bail. Prima facie, it is seen that son of the appellants/accused persons, who was a child as defined under Section 2(d) of the POCSO Act, was sexually exploited by the respondent no.2/First Informant, who is a married lady aged about 33 years and the appellants/accused persons were desirous to keep her away from their son. In the light of these observations, the appeal deserves to be allowed, and therefore, the order :

ORDER

- i) The appeal is allowed.

- ii) The impugned order dated 31st August 2017 passed by the learned Special Judge and Additional Sessions Judge, Kolhapur, below Exhibit 1 in Criminal Bail Application No.491 of 2017 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellants/accused is allowed.
- iv) In the event of arrest of the appellants/accused in Crime No.269 of 2017 registered at Rajarampuri Police Station, Kolhapur, at the instance of respondent no.2/First Informant the appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each and on furnishing surety in like amount by each of them.
- v) The appellants/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 appellants/accused shall co-operate 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.)