

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1183 OF 2019

Arvind Dattatraya Pathak .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

...

Mr. Rahul Motkari for the Appellant.

Mr. A. B. Deshpande for the Respondent No.2.

Mr. V. V. Gangurde APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 20th SEPTEMBER, 2019.

P.C:-

1. This appeal is filed against the impugned order passed by the Additional Sessions Judge, Nashik, thereby rejecting the application for anticipatory bail of the appellant, who is original accused No.1 in Crime No. 244 of 2019 registered for the offence punishable under Sections 376, 376(A) (B), 498(A), 504, 506 r/w. 34 of Indian Penal Code alongwith Sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012 and alongwith Section 3(2) (5) of The Scheduled Castes and The

Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard the learned counsel for the appellant, learned counsel for respondent No.2-complainant and learned APP.

3. It is submitted that except statement of complainant and her minor daughter aged 3 years, there is no independent evidence establishing the allegations made against the appellant in the report. It is further contended that the appellant, who is the father-in-law of the complainant is falsely involved in the present crime as appellant's husband who is also accused No. 2 in the present crime, has extra marital relation with some lady and is thus contended that allegations leveled against the appellant even otherwise cannot be relied upon as the appellant is aged 56 years old and as such cannot have indulged into such alleged acts upon the girl who is his grand-daughter aged 3 years. It is further submitted that the appeal shall be allowed by imposing suitable conditions upon appellant to facilitate further investigation.

4. Learned APP on the other hand strongly opposed the

appeal by contending that there is *prima facie* material against the appellant as found from the allegations made in the report as well as the statement of minor girl. It is also contended that investigation is in progress and having considering various other allegations in the report, made against appellant and also against co-accused No. 2 and 3, custodial interrogation of appellant is necessary. It is therefore, prayed that appeal be rejected.

5. Learned counsel for the respondent No.2, complainant had adopted the arguments advanced by the learned APP.

6. Perused the case diary. The report by Mrs. Dhanashree Kapil Pathak, who is wife of co-accused No. 2 would reveal that she married to said accused in the year 2011 and they have one daughter aged 3 years, who is victim of crime in the present case. In the present case, the allegations in the report against appellant are that appellant used to roam in the house only on underwear on his person and was insisting the minor child to touch his private part. It is further alleged that appellant as such was often in the habit of sexually molesting the minor girl. Case

as put-forth by the complainant, who is mother of minor prosecutrix further reveals that on one such occasion when she happen to visit one of her friend, she narrated such facts intimating about the said act of appellant. Statement of such friend of complainant, is found corroborating the case of mother, of minor prosecutrix. Similarly, it further reveals that the statement of common friend of complainant as well as of her friend further corroborates version of complainant as well as complainant's version that it is stated that complainant on visiting her house also, had narrated her about such acts done by appellant with her minor daughter. Apart from providing such sexual assault and advances to minor girl, statement of complainant also reveal that appellant though is her father-in-law had evil eye, on her as on one occasion in the presence of complainant, he removed all the clothes from his person and insisted complainant for inappropriate touches.

7. In view of contents of report as aforesaid and since investigation is in progress, it is not desirable to allow appeal as from various other contents of report, it is found

that there are specific allegations against co-accused No. 2 who happens to be complainant's husband and accused No. 3, Datta who is son-in-law of appellant. However, since appeal for consideration is by appellant alone who is accused No. 1 in the present crime. Allegations leveled against with regard to the other co-accused are not considered in detail which prima facie established involvement of all accused for an offence punishable under Section 498(A) of Indian Penal Code and other offences, applied in the present crime.

8. It is material to note that co-accused No. 3, Datta Kulkarni, against whom also there are major allegations of sexual assault upon complainant, is in fact released on anticipatory bail by the Trial Court, considering his own affidavit placed on record at the time of hearing, and relying upon its contents, learned Trial Court have held that on the day of incident, appellant was not in Nashik but was in Chalisgaon. Admittedly, this affidavit is not part of case diary. In that view of matter, it is thus found that Trial Court while considering the anticipatory bail of accused No. 3, Datta, allowed the same. However, considering the

available evidence against appellant, appeal is liable to be dismissed, same is accordingly dismissed.

(P. N. DESHMUKH, J.)