

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1193 OF 2019**

Sambhaji Mahadev Waghmode and Ors. .. Appellants

Versus

The State of Maharashtra and Anr. .. Respondents

...

Mr. Shriram S. Chaudhari for the Applicant.

Ms. Jyoti Lohokare, APP for the Respondent/State.

ASI D.L. Tandale Mangalwedha Police Station present.

Complainant Akshay M. Khilare present.

CORAM: P. N. DESHMUKH, J.

DATED : 7th OCTOBER, 2019.

P.C:-

1. This appeal is filed by accused persons involved in Crime No.692/ 2019 registered by Sangola Police Station, District Solpaur for the offence punishable under Sections 324, 323, 504, 506, 143, 147 and 149 of Indian Penal Code and Section 3(1)(r) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, for bail.

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2. Respondent No. 2 is present on service of notice and submits that he did not want to engage services of advocate and will defend his case through Public Prosecutor. Investigating Officer present. Perused the case diary.

3. Learned Counsel for appellant submits that appellants are falsely involved as father of complainant is involved in crime registered on the basis of report lodged by his daughter in law, involving appellant no. 1 , 5 years old grand daughter to have been sexually exploited by complaint's father. As on the basis of report by daughter in law of appellant no. 1 offence punishable under section 376 (2)(1) of Indian Penal Code r/w Sec 3,4 and 42 of Protection of Children from Sexual Offences Act, 2012, is registered against Madhukar Khilare who is admitted by respondent no. 2 to be his father.

4. It is therefore contended that applicants be released on bail by imposing suitable conditions as the report is exaggerated . The learned APP opposed the bail submitting that appellants custody is required as weapon of assault is yet to be recovered. However, on instructions, makes statement that
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except for sister and brother of complainant, no statements of independent witnesses are available as the incident took place inside the house.

5. In the background of submissions, it is noted that the incident took place on 11th August 2019 and at about 11.30 a.m. in the house of complainant where appellants are said to have reached and appellant no. 1 after inquiring about father of complainant said that his father had taken away his grand daughter and is alleged to have immediately opened assault on complainant on his face, hands when appellant no. 2 assaulted on the back of complainant by weapon stick and appellant Nos. 3 to 5 are alleged to have assaulted by kick and fist blows. According to further contents of report he was subjected to brutal assault and in the course of same incident appellant no. 3 Arjun had caught hold of younger brother of complainant who was assaulted by appellant no. 5 Pappu and thereafter on arrival of his maternal uncle, appellant ran away from the spot.

6. In the background of above contentions, perusal of medical certificate of complainant, would reveal that except for *Yugandhara patil*

sustaining two simple injuries on his back, he has not suffered any other injuries on his face, hands etc., which therefore falsifies his report to that extent. Similarly, there appears substance when it is contended that report is exaggerated, as according to the complainant he was brutally assaulted. However, from medical report except for two simple injuries, no injuries are sustained by complainant.

7. Similarly contents of report are further found exaggerated as according to complainant, assault on his younger brother was by appellant no. 5 Pappu after he was caught hold by appellant no. 3 Arjun. However, learned APP on instructions, submits that complainant's younger brother had not sustained any injury. Admittedly, except for statement of complainant's sister and brother there are no statements of independent witnesses. In the background of above facts, appeal is liable to be allowed though investigation is in progress, by imposing conditions to facilitate further investigation. Hence the order.

ORDER

1. In the event of arrest of the Applicants in Crime No. 692 of 2019 registered by Sangola Police Station,
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they shall be released on bail on their executing P.R.Bond in the sum of Rs. 15,000/- each with one surety each in the like amount.

2. Applicant shall attend Investigating Officer as and when till filing of the charge-sheet.

(P. N. DESHMUKH, J.)