

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1467 OF 2018

CHETAN / SAKHYA NAMDEO SHELKE)...APPELLANT

V/s.

1) THE STATE OF MAHARASHTRA)
)
2) PUNJABAI NANDU GANGURDE)...RESPONDENTS

Mr.P.B.Shah i/b. Mr.K.P.Shah, Advocate for the Appellant.

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

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

DATE : 20th MARCH 2019

JUDGMENT :

1 By this appeal, the appellant/accused is challenging the order dated 31st July 2018 passed by the learned Special Judge in Special (Atrocity) Case No.11 of 2018, thereby rejecting his application for bail in Crime No.14 of 2018 registered with Sinnar

Police Station, Nashik, for offences punishable under Sections 376(i)(j), 323 and 506 of the Indian Penal Code as well as under Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, and under Sections 3(1)(r)(s) and (w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard the learned counsel appearing for the appellant/accused. He drew our attention to the report of medical examination of the victim female child and submitted that the history given to the Medical Officer was not that of penetrative sexual assault but was of sexual molestation. It is further argued that statement of the victim female child and her cousins are contradictory. No injury was found on body of the victim female child and the fact that the victim female child had not offered any resistance goes to show that she was a consenting party. As against this, the learned APP opposed the appeal by contending that there is prima facie evidence against the appellant/accused and considering the nature of crime, he is not entitled for bail.

3 We have considered the submissions so advanced and perused the material placed on record. First Information Report (FIR) of the crime in question is lodged on 21st January 2018 by mother of the victim female child. The victim female child is belonging to Bhil caste which is a Scheduled Tribe. According to the prosecution case, as reflected from the FIR as well as statements of the victim female child and her cousins, on 21st January 2018, the victim female child accompanied by he cousins Pallavi and Neelam had been to outskirts of Village Vinchur Dalvi for grazing she-goats. The appellant/accused went there by motorcycle and gave Cadbury chocolates to them. He, then, took the victim female child in the bushes and committed penetrative sexual assault on her. Version of the victim female child, who happens to be 16 years and 4 months old, is corroborated in material particulars by statements of her cousins Pallavi and Neelam, who had accompanied her. Eye witness Shobha Wagh has also stated that she noticed the appellant/accused taking the victim female child and then return of the victim female child with torn clothes.

4 Considering the nature of crime and evidence available on record, no case for grant of bail is made out. However, considering the fact that the appellant/accused is an under trial prisoner, the subject sessions case needs to be expedited. Therefore, the order :

ORDER

i) The appeal is dismissed.

However, the learned trial court is directed to expedite the hearing of the subject sessions case and to complete the same, as far as possible, within a period of one year from the date of receipt of this order.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)