

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.138 OF 2019

TRIMBAKMUNI MANGALMUNI DAS)...APPELLANT

V/s.

STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Jaideep Thakker, Advocate for the Appellant.

Mrs.Megha Bajoria, Appointed Advocate for Respondent No.2.

Mr.V.B.KondeDeshmukh, APP for the Respondent - State.

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

**DATE : RESERVED ON 3RD APRIL 2019
PRONOUNCED ON 9TH 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 appellant/accused no.1 is challenging the order dated 18th June 2018 passed by the learned Special Judge, Thane, below

Exhibit 56 thereby rejecting his claim for regular bail in Crime No.I-18 of 2017 registered with Police Station Mokhada, at the instance of respondent no.2/First Informant for offences punishable under Sections 363, 366, 376(2)(n), 506, 420, 343, 120B of the Indian Penal Code, under Section 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as well as under Section 2(1) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.

2 Heard the learned counsel appearing for the appellant/accused. He drew our attention to the First Information Report (FIR) lodged by respondent no.2/First Informant, so also to the report of medical examination of the respondent no.2 and argued that the FIR so also the medical report shows that the respondent no.2/First Informant married the appellant/accused and they were treating each other as husband and wife. Our attention was drawn to the Marriage Certificate dated 5th April 2017 issued by Shubh Mangal Vivah Karyalay, Chinchani, so also

notarized Marriage Certificate and it is argued that marriage of the respondent no.2/First Informant was solemnized with the appellant/accused on 5th April 2017 at Village Chinchani. The learned counsel argued that the respondent no.2/First Informant is an adult lady having crossed the age of giving consent and she married the appellant/accused after having love relations with him. By drawing out attention to the whatsapp chat between the appellant/accused and the respondent no.2/First Informant, the learned counsel argued that the marriage preceded the love relations. Our attention was also drawn to the photographs of marriage of the appellant/accused with the respondent no.2/First Informant to demonstrate that the respondent no.2/First Informant happily married the appellant/accused. With this, it is argued that the appellant/accused, who is behind bars from 17th May 2017, is entitled for bail.

3 As against this, the learned counsel for the respondent no.2/First Informant vehemently opposed the appeal by contending that the offence is also punishable under the

Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, so also under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned counsel further argued that the respondent no.2/First Informant was compelled to marry the appellant/accused and her consent to the marriage was not free consent. Similar arguments were advanced by the learned APP and it is argued that there is evidence to come to the conclusion that the appellant/accused has committed rape on the respondent no.2/First Informant.

4 We have considered the submissions so advanced and also perused the charge-sheet.

5 The FIR lodged on 10th May 2017 by the respondent no.2/First Informant shows that she is an adult lady. At the time of lodging of the FIR, her age was 20 years. She had taken education upto 2nd Year of Bachelor of Science. As per averments in the FIR, she belongs to Scheduled Tribe Mahadeo Koli and was

residing at Village Khodala in Mokhada Taluka of Palghar. The respondent no.2/First Informant avers that two or three months prior to lodging the FIR dated 10th May 2017, the appellant/accused along with Pandurang Choudhari and Ravindra Katilkar came to her house for drinking water. At that time, he told that he is a “baba” and cures ailments by ayurvedic medicines as well as chanting mantras. The FIR further avers that then parents of the respondent no.2/First Informant took her to the “math” of the appellant/accused and he gave some medicines to cure piles of the respondent no.2/First Informant. Thereafter, the appellant/ accused visited house of the respondent no.2/First Informant on four to five occasions and he assured her of providing employment. The respondent no.2/First Informant further averred that on 2nd April 2017 by contacting her on phone, co-accused Chetan Dalvi, Mangala Pandurang Choudhari and Sandeep Pandurang Choudhari threatened her to marry the appellant/accused. Then on 5th April 2017, co-accused Kiran Bambhire called her near a water tank of Village Mokhada and from there, by a car, she was taken to Village Charoti. Then, the

appellant/accused was called at that place and thereafter, they all went to the temple of Sai Baba at Chinchan. There, she was forced to marry the appellant/accused. Her signature was taken on stamp paper and she was dropped at Village Javhar from where she went to her house. The respondent no.2/First Informant further averred that on 8th April 2017, the appellant/accused caller her telephonically and threatened to put photographs of their marriage on the web. On 13th April 2017, when she went to the house of co-accused Alka Budhar, she was made to sign a bond paper and thereafter, she returned to her house.

6 As per version of the respondent no.2/First Informant, as reflected from the FIR, on 15th April 2017, after taking result from her college along with co-accused Kiran and Alka Budhar, she went to Gujarat State. There, co-accused Chetan Dalvi came. She was kept in Room No.306 of a building near J.B.S.Company, Billard Station Road, where the appellant/accused raped her for about seven days. He threatened to sacrifice her to Kalika Mata. Then, the appellant/accused took her to Police Station Mokhada

on 23rd April 2017 in pursuant to the report lodged by her father. The respondent no.2/First Informant further stated in her FIR that she gave a statement in writing to the police that she married the appellant/accused. However, this was under threats of the appellant/accused to kill her parents.

7 As per the version of the respondent no.2/First Informant, on 29th April 2017, the appellant/accused sent a notice for restitution of conjugal rights to her through an advocate, and therefore, she lodged the report.

8 The FIR lodged by the respondent no.2./First Informant as such, prima facie shows that marriage between her and the appellant/accused was solemnized at Village Chinchin on 5th April 2017. Thereafter, she went to Billard town in Gujarat where she stayed with the appellant/accused for a period from 15th April 2017 to 23rd April 2017. Either prior to 15th April 2017 or subsequent to 23rd April 2017, she had neither reported the matter regarding her alleged forcible marriage with the

appellant/accused to her parents or to police. Even after 23rd April 2017, she had not disclosed either to her parents or police that the appellant/accused committed rape on her by detaining her in a room and threatening her about her sacrifice to Kalika Mata. The cause of action for lodging report, as seen from the FIR, is issuance of notice by the appellant/accused through an advocate for restitution of conjugal rights to the respondent no.2/First Informant. Copy of that notice is filed with the charge-sheet by the Investigating Officer. Recitals in that notice are to the effect that marriage of the appellant/accused and the respondent no.2/First Informant was solemnized on 5th April 2017 at Shubh Mangal Vivah Karyalay. Marriage certificate with the charge-sheet shows that at Shubh Mangal Vivah Karyalay, entry about solemnization of the marriage of the appellant/accused with the respondent no.2/First Informant was made at Serial No.2 of Volume No.2017-18 of the Register of Marriage maintained under the Maharashtra Regulation of Marriage Bureaus and Registration of Marriage Act, 1998. The Marriage Certificate notarized by Advocate Ajay Thakkar Notary is also filed with the charge-sheet

and it shows that the marriage of the parties was solemnized on 5th April 2017. Statement of Advocate Ajay Thakkar Notary was recorded by the Investigating Officer on 28th May 2017 and this witness has stated that the respondent no.2/First Informant had stated him on 5th April 2017 that she voluntarily and with her free consent married the appellant/accused. To crown this all, when the respondent no.2/First Informant was sent for medical examination, she gave history which was recorded by the Medical Officer in following words :

“Mr.Trimbakmuni Mangalmuni Das (Husband) and Prajakta Dattatraya Idhe (survivor) came in physical contact on 15/4/17, 20/4/17, 21/4/17.”

It is, thus, clear that, even to the Medical Officer, the respondent no.2/First Informant disclosed that the appellant/accused is her husband.

9 The appellant/accused has also relied on photographs of marriage annexed to the application so also whatsapp chat between him as well as the respondent no.2/First Informant. At

this stage, no comments on these documents which are not forming the part of the charge-sheet are required to be made.

10 The appellant/accused is behind bars since 17th May 2017 i.e. since last two years. Nature of evidence appearing against him is indicated in the foregoing paragraphs. Considering this nature of evidence against the appellant/accused, we are of the considered opinion that further pre-trial detention of the appellant/accused is not warranted. Therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 18th June 2018 passed by the learned Special Judge, Thane, below Exhibit 56 in Sessions Case No.269 of 2017 thereby rejecting his application for bail in Crime No.I-18 of 2017 registered with Police Station Mokhada, at the instance of respondent no.2/First Informant

for offences punishable under Sections 363, 366, 376(2)(n), 506, 420, 343, 120B of the Indian Penal Code, under Section 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as well as under Section 2(1) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, is quashed and set aside.

- iii) The application for bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.I-18 of 2017 registered with Police Station Mokhada, at the instance of respondent no.2/First Informant Prajakta Dudhe, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- 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 appeal is disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)