

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1413 OF 2018

Dada @ Hanumant Khandu Jadhav	...	Appellant
V/s.		
The State of Maharashtra & Anr.	...	Respondents

Mr.Rahul S. Kate, Advocate for the Appellant.

Mr.H.J.Dedhia, APP for the Respondent/State.

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

DATED : 24th APRIL 2019.

ORAL JUDGMENT : (Per : A.M.Badar, J.)

1 By this appeal, the appellant/accused is challenging the Order dated 03/11/2018 passed by the learned Special Judge/Additional Sessions Judge, Vaduj in Criminal Application No.259 of 2018 thereby rejecting the application under Section 439 of the Code of Criminal Procedure filed by the appellant/accused in Crime No.152 of 2018 registered with Mhaswad Police Station for the offences punishable under Sections 376, 452, 323, 504, 506 of the Indian Penal Code as well as under Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7 of the Protection of Civil Rights Act, 1955.

2 Heard.

3 Admit. Heard finally by consent of parties.

4 The learned Counsel for the appellant/accused drew our attention to the FIR as well as photographs of the prosecutrix and the appellant/accused. Our attention is also drawn to the whatsapp chat between both of them. With this, it is argued that the appellant/accused was having consensual sexual relations with the prosecutrix, even if the case of the prosecution is accepted. The learned Counsel further argued that considering this nature of evidence against the appellant/accused his further pre-trial detention is not warranted.

5 The learned Additional Public Prosecutor opposed the appeal by contending that the FIR itself shows that the appellant/accused had committed rape on the prosecutrix, who happens to be married woman and thereafter continued to commit rape for a considerable long period.

6 Despite service, the respondent No.2/First Informant is absent. It is also noticed that even the appellant/accused had effected private service on the respondent No.2/First Informant.

7 We have considered the submissions so advanced and perused the FIR as well as other documents made available on record.

8 According to the case of prosecution, the First Informant is a married woman aged about 28 years residing in joint family comprising of her in-laws and husband. She was working as Computer Instructor. She averred that on 22/05/2017, the appellant/accused came to her computer institution and took her in his vehicle and subsequently committed rape on her. She further averred that two months thereafter the appellant repeated same incident at her house and thereafter also he continued to commit rape on her by vising her house when there used to be nobody in the house. Ultimately, on 26/09/2017 when the prosecutrix along with her daughter and sister Deepali were sleeping on the terrace of her house, the appellant/accused came and committed rape on her and upon her protest, her husband and relatives came on terrace and this has caused her to lodge the FIR.

9 On this backdrop, statement of Deepali shows that she has not noticed any such incident of rape and she woke up only to find that her brother-in-law i.e. husband of the prosecutrix and other relatives present on the terrace. Deepali has not seen the appellant committing rape of the prosecution at the terrace despite her full resistance.

10 Papers of investigation *prima facie* reveals that the prosecutrix was a consenting party to the incident which had taken place with her for a period of more than one year. She had

not protested against the alleged act of the appellant/accused during this period though she was staying in joint family, though she was familiar to the appellant/accused, who was not having any criminal antecedents. Considering this nature of evidence against the appellant/accused, his pre-trial detention is not warranted and therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order dated 03/11/2018 passed by the learned Special Judge/Additional Sessions Judge, Vaduj in Criminal Application No.259 of 2018 is quashed and set aside.
- (iii) Bail Application No.259 of 2018 for grant of bail filed by the appellant/accused is allowed.
- (iv) He be released on bail on his executing P.R.Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (v) As a condition of this Order, the appellant/accused should not contact the prosecutrix and other prosecution witnesses in any manner during pendency of the trial.
- (vi) He should not extend any threat, promise, inducement to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(vii) The Appeal is accordingly disposed of.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)