

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL No. 1462 OF 2018

Ashok Suresh Pise ... Appellant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Nagesh Chavan i/b Rahul B. Khot, for the Appellant.

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

Ms. Rebecca Gonsalvez, appointed advocate for Respondent No. 2.

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

DATE : MARCH 19, 2019

ORAL JUDGMENT :

1. Heard. Admit. Learned APP waives notice for Respondent No. 1 State. Ms. Rebecca Gonsalvez, learned appointed advocate waives notice for Respondent No. 2. By consent of parties, appeal is taken up for final hearing.

2. The Appellant-accused is challenging the order dated 6th April, 2018 passed by the learned Special / Additional Sessions Judge, Vaduj in Criminal Bail Application No. 29 of 2018 in Crime No. 6 of 2018 registered with Mhaswad Police Station for the offence under S. 376, 323, 504, 506, 452, 454, 457, 380, 392, 427 of the Indian Penal Code, under S. 3(1)(w)(ii), 3(2)(v)(ca) of the

Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, and S. 7(1)(d) of the Protection of Civil Rights Act.

3. The facts, in brief, are that Appellant-accused is resident of village Mhaswad, whereas Respondent No. 2 / first informant is resident of Virkarwadi. On 25.1.2018 she lodged FIR alleging that in the year 2014 she has lodged report of outraging her modesty by the Appellant-accused and that FIR ultimately culminated in filing of the charge-sheet and registering of the case against the Appellant-accused. In the FIR, it is further averred that during pendency of criminal proceedings, she became acquainted with the accused. She further averred that in the night of 21.1.2018, the Appellant-accused entered into her house, threatened her to withdraw the criminal case filed against him and on her refusal to do so, he committed rape on her. She further averred in the FIR that on the next day, she went to village Borgaon, taluka Malshiras and met her parents, and discussed about the incident with them. Ultimately, on she lodged report of the incident on 25.1.2018.

4. The supplementary statement of the prosecutrix came to be recorded on the very next date, in which she had made various allegations against the Appellant-accused, which was figured in the FIR, lodged on 25.1.2018. In the supplementary statement, the prosecutrix alleged that the Appellant-accused used

to force her to withdraw the criminal case, pending against him by calling her on mobile. He was asking her to give him amount of Rs.60,000/- received by her as compensation in the year 2014. She further averred that in the year 2016 Appellant-accused robbed Mangalsutra from her and this fact was told to Rahul Mhetre, but she did not lodge report in respect of this incident. In her supplementary statement, she further averred that on 30.11.2017, the Appellant-accused called in intoxicated condition and this fact was also told by her to Rahul Mhetre. She contended that on 29.11.2017 the Appellant-accused came to her house, threatened her, and her mother to withdraw the case. In December, 2017, the Appellant-accused forcibly took amount of Rs.500/- from the account of her son. On 21.1.2018, the Appellant-accused asked him about her whereabouts. She alleged that on 20.1.2018 she was told that Appellant-accused was imposed fine of Rs.100/-, and to take revenge he committed rape on her. At the end of her supplementary statement, she contended that the fact of visit of the Appellant-accused to her house was seen by her neighbour Abasaheb Namdas, from whom Appellant-accused took tobacco.

5. Perusal of the charge-sheet shows that medical evidence is not supporting case of the prosecution. During pendency of investigation, investigation officer has recorded statement of 3 witnesses, viz. Abasaheb Namdas, Rahul Mhetre,

Raju Pise. All these witnesses in unison has stated that there is love relation between the Appellant-accused and the prosecutrix right from the year 2014.

6. On this backdrop, the learned counsel for the Appellant-accused contended that there is no material to show that accused threatened the prosecutrix. As against this, learned counsel for Respondent No. 2 opposed bail application contending that while releasing the accused on bail in respect of incident of 2014, the learned Sessions Judge has imposed condition to the effect that he should not contact the prosecutrix in any manner. This condition is violated by the accused. By drawing our attention to the statement of Adesh, i.e. son of the prosecutrix, the learned counsel for Respondent No. 2 contended that he is supporting case of the prosecutrix. It is further contended that Raju Pise, Rahul Mhatre and Abasaheb, are interested being friend of the Appellant-accused. The learned counsel further contended that the prosecutrix belongs to a lower caste, whereas the Appellant-accused belongs to higher caste, and he is repeatedly pressurising the victim to withdraw the criminal case, registered against him in the year 2014. Therefore, he is not entitled to be released on bail. The learned Additional Public Prosecutor contended that brother of Appellant-accused has pressurised the prosecutrix to withdraw the case, and accordingly, a non-cognizable offence is registered on the brother of the accused. Therefore, Appellant-accused is not

entitled to be released on bail.

7. We have considered submissions advanced by the counsel appearing for the respective parties and perused the charge-sheet. The statement of the prosecutrix shows that from time to time she took assistance of Rahul Mhetre for making complaint of acts of the Appellant-accused. This implies that Rahul Mhetre was in good terms with the prosecutrix. The supplementary statement of the prosecutrix shows that Abasaheb Namdas is her neighbour. In this context, statement of both these witnesses shall have to be construed since they have spoken about love relations between accused and the prosecutrix, which was going on since 2014.

8. Statement of Abasaheb Namdas, who is neighbour of the prosecutrix is relevant. He has spoken about the incident of 21.1.2018. As per version of the prosecutrix, in the night hours of that day, the Appellant-accused came to her house and committed rape on her. As against this, Abasaheb Namdas has stated to police that in the evening of 21.1.2018 in intoxicated condition, the Appellant-accused abused the prosecutrix. Thereafter, after some time parents of the prosecutrix came to her house and in their presence, the Appellant-accused gave abuses and threatened the prosecutrix. Thereafter, he left the place. In this context, statement of Rahul Mhetre is also relevant. He met prosecutrix on 21.1.2018.

At that time, parents of the prosecutrix were also present. The prosecutrix has not disclosed the alleged incident of commission of rape on her by the Appellant-accused to Rahul Mhetre on 21.1.2018. She has only stated that the Appellant-accused has committed atrocity on her and threatened to kill her. Rahul Mhetre stated to the investigating officer that the prosecutrix was threatening him that she would lodge report against him attracting the provisions of the Atrocity Act. He has stated that Appellant-accused as well as prosecutrix He has stated that Appellant-accused as well as the prosecutrix used to attend the Vaduj court by going in one vehicle and both of them were having relation since many days.

9. The learned counsel for Respondent No. 2 further argued that from 2014-15 and thereafter, the prosecutrix is residing with her parents and son at Borgaon. It will have to be determined at the stage of trial as to whether version of the prosecutrix that she was alone in her house in the night hours on 21.1.2018, where the Appellant-accused committed rape on her, is correct or not, in the light of statement of her neighbour Abasaheb Namdas.

10. At this stage, we are required to consider whether pre-trial detention of accused is necessary or not. Considering nature of evidence available against the Appellant-accused, we are of the

opinion that by imposing some conditions on him, he needs to be released on bail. In the impugned order, the learned Special Judge failed to appreciate the evidence collected by the Investigating Officer in proper perspective, and held that the allegations are serious, and therefore, Appellant-accused cannot be released on bail. We are unable to endorse with such finding. In this view of the matter, following order is passed.

ORDER

- (i) Appeal is allowed.
- (ii) Impugned order dated 6.4.2018 passed by the learned Special Judge / Additional Sessions Judge, Vaduj is quashed and set aside.
- (iii) The criminal bail application for grant of bail filed by the Appellant-accused in respect of Crime No. 6 of 2018, registered with Mhaswad Police Station at the instance of Respondent No. 2, is allowed.
- (iv) The Appellant-accused be released on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (v) As a condition of this order, the Appellant-accused should not enter in the local limits of village

Virkarwadi, taluka Man, district Satara, during pendency of the trial, and he should not contact the prosecutrix (Respondent No. 2) or her relatives, including her son in any manner. The Appellant-accused shall not make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court.

- (vi) The Appellant-accused should not commit any crime in future.

Sd/-
[A. M. BADAR, J.]

Vinayak Halemath

Sd/-
[INDRAJIT MAHANTY, J.]