

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1533 OF 2018

JAWED RAMJAN TAMBOLI

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Rupesh Zade, Advocate for the Appellant.

Mr.H.J.Dedhia, APP for the Respondent No.1 – State.

Ms.Rebecca Gonsalvez, Advocate Appointed for Respondent No.2.

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

DATE : 14th MARCH 2019

ORAL JUDGMENT :

1 Heard. Admit. Heard finally forthwith, by consent of parties.

2 The appellant/accused is challenging the order dated 14th December 2018 passed by the learned Special Judge under

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Baramati, in Criminal Bail Application No.917 of 2018 thereby rejecting claim of anticipatory bail made by the appellant/accused in Crime No.917 of 2018 registered with Baramati City Police Station for offences punishable under Sections 363, 366, 376, 504, 506 of the Indian Penal Code as well as under Section 3(1)(r)(s)(w)(i) and 3(2)(va) and 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Heard the learned counsel appearing for the appellant/accused. He argued that the appellant/accused as well as the alleged victim of the crime in question were adult and the First Information Report (FIR) lodged by the respondent no.2/First Informant shows that the parties married by consent of each other. He drew our attention to the Marriage Certificate placed at Exhibit C in the paper-book, so also the joint application moved by the appellant/accused as well as the respondent no.2/First Informant before the Superintendent of Police mentioning therein

that the appellant/accused as well as the respondent no.2/First Informant married by consent and nobody should trouble them. With this, the learned counsel for the appellant/accused submitted that after lapse of about two months, the FIR came to be lodged by the respondent no.2/First Informant alleging that without her consent, she was compelled to marry the appellant/accused and that the appellant/accused has committed forcible sexual intercourse with her.

4 The learned APP opposed the appeal by contending that in view of bar of Section 18 as well as Section 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appeal itself is not maintainable. The learned APP further argued that the Marriage Certificate marked as Exhibit C produced by the appellant/accused is a fraudulent certificate. He reiterated the contentions in the FIR to show that offences alleged are serious and custodial interrogation of the appellant/accused is warranted. Similar is the argument of the learned counsel appearing for the respondent no.2/ First Informant.

5 I have carefully considered the rival submissions and also perused the impugned judgment and order rejecting the application for anticipatory bail moved by the appellant/accused, so also the FIR and documents annexed with the appeal. So far as bar under Section 18 as well as Section 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned, the learned Special Judge has categorically held that the same is not applicable to the case in hand. This finding is not challenged by the State or the First Informant.

6 It is the case of the prosecution itself that the appellant/accused married the respondent no.2/First Informant and as such, alleged forged Marriage Certificate is of no relevance at this stage.

7 So far as other findings are concerned, the FIR is categorically stating that the respondent no.2/First Informant as well as the appellant/accused were acquainted with each other. The FIR shows that the respondent no.2/First Informant had

accompanied the appellant/accused to some lodge and they indulged in sexual intercourse, which according to the respondent no.2/First Informant is without her consent. Similarly, it is stated in the FIR that on 14th September 2018 the appellant/accused married the respondent no.2/First Informant, which again, according to the respondent no.2/First Informant, is against her desire. At this juncture, it is apposite to note that the respondent no.2/First Informant is major and as such, was competent to give consent. She was taking education in a college at Baramati. The offence alleged is dated 14th September 2018. The FIR came to be lodged on 30th November 2018. The joint application of the appellant/accused as well as the respondent no.2/First Informant addressed to the Superintendent of Police is signed by four witnesses. The same is to the effect that the appellant/accused as well as the respondent no.2/First Informant had married and nobody should trouble them. Considering this piece of evidence available against the appellant/accused in a matter in which the respondent no.2/First Informant is a major and an educated person, we are of the considered opinion that custodial

interrogation of the appellant/accused is not warranted.

Therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 14th December 2018 passed by the learned Special Judge, Baramati, below Exhibit 1 in Criminal Bail Application No.917 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.917 of 2018 registered with Baramati City Police Station, at the instance of respondent no.2/First Informant Rutuja Bobate, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- 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 appellant/accused shall not in any manner tamper with the prosecution witnesses.
- vii) The appellant/accused should co-operate the investigation and attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)