

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.459 OF 2020

Nilesh s/o Macchindra Kale,
Age 19 years, Occupation Education,
R/o Kolgaon Shivar Tq. Shrigonda
Dist. Ahmednagar.

...Appellant

VERSUS

- 1) The State of Maharashtra,
Through The Investigation Officer,
Police Station Belwandi
Tq. Shrigonda Dist. Ahmednagar.
- 2) Jaya d/o Kadhya Bhosale,
Age 16 years, Occupation Nil,
R/o Nimbalkar Vasti, Kolgaon
Tq. Shrigonda Dist. Ahmednagar.
U/G Kadan s/o Pensil Bhosale,
Age Major, Occupation Agri.,
R/o Nimbalkar Vasti, Kolgaon
Tq. Shrigonda Dist. Ahmednagar.

...Respondents

.....
Advocate for Appellant : Mr M. B. Sandanshiv.
APP for Respondent No.1-State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.2 : Mr. Vinod Salve
(Appointed)

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WITH
CRIMINAL APPEAL NO.460 OF 2020

Macchindra s/o Topya Kale,
Age 51 years, Occupation Agri.,
R/o Kolgaon Shivar Tq. Shrigonda
Dist. Ahmednagar.

...Appellant

VERSUS

- 1) The State of Maharashtra,
Through The Investigation Officer,
Police Station Belwandi
Tq. Shrigonda Dist. Ahmednagar.
- 2) Jaya d/o Kadhya Bhosale,
Age 16 years, Occupation Nil,
R/o Nimbalkar Vasti, Kolgaon
Tq. Shrigonda Dist. Ahmednagar.
U/G Kadan s/o Pensil Bhosale,
Age Major, Occupation Agri.,
R/o Nimbalkar Vasti, Kolgaon
Tq. Shrigonda Dist. Ahmednagar.

...Respondents

.....
Advocate for Appellant : Mr M. B. Sandanshiv.
APP for Respondent No.1-State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.2 : Mr. Vinod Salve
(Appointed)
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24-09-2020.

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, both the appeals are admitted.
3. By consent, both appeals are taken up for final disposal.

4. Both the appeals have been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Criminal Appeal No.459 of 2020 has been filed to challenge the order dated 17-08-2020, by learned Additional Sessions Judge, Shrigonda Dist. Ahmednagar in Criminal (Bail) Application No.455 of 2020, whereby the application for anticipatory bail came to be rejected. Whereas, Criminal Appeal No.460 of 2020 is filed to challenge the order dated 17-08-2020 by the same Court passed in Criminal (Bail) Application No.451 of 2020 whereby the application under Section 439 of Code of Criminal Procedure filed by the appellant came to be rejected. Both the appeals are connected to Crime No.280 of 2020, dated 30-07-2020, registered with Belwandi Police Station, for the offences punishable under Section 354, 504, 506 of Indian Penal Code and Section 3(1)(w)(i)(ii), 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Section 7 and 8 of the Protection of Children From Sexual Offences Act, 2012.

6. Heard learned Advocate Mr. M. B. Sandanshiv for appellants, learned Additional Public Prosecutor Mr. S. B. Pulkundwar for

respondent No.1-State and learned appointed Advocate Mr. Vinod Salve for respondent No.2- original informant.

7. It has been vehemently submitted on behalf of the appellants that, the learned Special Judge has failed to consider the provisions under Code of Criminal Procedure as well as the Atrocities Act in respect of regular bail applications that was rejected. The learned Special Judge failed to see that, the physical custody of the applicants were not at all required. The bail applications are rejected on the ground that, the submissions in respect of false implication by the applicants cannot be believed and there is every likelihood of threats and tampering evidence by the applicants. The learned Special Judge failed to consider that, there was a dispute between the family members of the accused and family members of the informant. Wife of appellant in Criminal Appeal No.460 of 2020, who is the mother of the appellant in Criminal Appeal No.459 of 2020, had lodged a complaint against the informant and her family members on 18-11-2019 when they had caused damage to the shed which was erected by the appellants in the land. Though the said land belongs to Government yet since many years the appellants are cultivating the same. Another fact that is not considered by the

learned Special Judge that, both the applicants/ appellants are the members of Scheduled Caste and, therefore, the offence under the Atrocities Act are not attracted against them. The offence under Indian Penal Code and POCSO Act do not require the physical custody of the applicants/ appellants and, therefore, both the applications ought to have been allowed by the learned Special Judge.

8. Per contra, the learned Additional Public Prosecutor as well as learned Advocate who is appointed to represent the cause of the informant strongly opposed the appeals and submitted that, though the appellants are the members of Scheduled Caste yet the bail applications could not have been granted as they had attempted to outrage the modesty of the informant in broad day light. Learned Additional Public Prosecutor pointed out that, though the informant has given her age as 15 years 01 month in her First Information Report, yet when the birth certificate has been collected, it appears that she is major. Therefore, the offence under POCSO Act cannot be made out yet the facts given in the First Information Report would disclose offence under Section 354 of Indian Penal Code.

9. At the outset, from the contents of the First Information

Report itself wherein it is stated that, the present appellants are 'Hindu Pardhi' which is a 'Scheduled Tribe' and the informant is also of the same caste. The offence under the Atrocities Act is absolutely not made out against them. One third accused is stated to be involved by name Balu Kerba Yethekar and he is stated to be 'Hindu Wadari' by caste. The said caste is under 'Nomadic Tribes' in Maharashtra and in some States it is under 'Scheduled Caste'. Therefore, as regards the application for pre-arrest bail by the appellant in Criminal Appeal No.459 of 2020, there could not have been bar under Section 18 of the Atrocities Act.

10. Another fact is that, now the birth certificate of the informant has also been collected by the Investigating officer and it appears that she is aged around 19 years, therefore the offence under POCSO Act is also not made out. Therefore, as regards the present appellants are concerned, only the offence under Section 354, 504, 506 of Indian Penal Code remains. The nature of this offence is as such that the physical custody of the accused is not at all necessary. In fact, the learned Special Judge did not consider all these aspects and rejected the regular bail also on the ground that there is likelihood of tampering with the evidence. In fact there was

absolutely no material with the learned Special Judge to come to that conclusion. That material has not been reflected in the reasons given for rejecting the applications. Such insensitive approach is not expected from the judicial authorities. When there was no material at all then the judicial officer is not supposed to come to a conclusion that, there is likelihood of tampering with the evidence. The ground of tampering with the evidence can be tackled in other way without curtailing the liberty of a person. In other words, sending such person to jail against whom allegations are made that there is likelihood of tampering of the evidence without there being any material, is not the only remedy. Strict conditions can be imposed while releasing such person on bail. One of the paramount consideration while dealing with the bail applications is the right to liberty enshrined in Article 21 of the Constitution of India. As that liberty is not an absolute liberty or fundamental right, it can be granted by imposing conditions.

11. Here in this case no doubt it appears that, mother and wife of the respective appellants had filed a complaint against the informant and her family members in respect of a land dispute and at this stage we may not go to explain regarding false implication, yet that

fact cannot also be taken as a piece to come to a conclusion that the appellants will tamper with the evidence. From the First Information Report it can be seen that, there was a delay of 8 days in lodging the report, and the explanation for the delay is that, she was frightened and all of them would be killed.

12. Thus taking into consideration all these aspects, the appeals deserve to be allowed. Hence, following order.

ORDER

- 1) Both the appeals stand allowed.
- 2) The orders passed on 17-08-2020, by learned Additional Sessions Judge/ Special Judge, Shrigonda Dist. Ahmednagar, in Criminal (Bail) Applications No.455 of 2020 and No.451 of 2020, are hereby set aside. Both the applications stand allowed.
- 3) In the event of arrest of Nilesh Macchindra Kale in connection with Crime No.280 of 2020, dated 30-07-2020, registered with Belwandi Police Station, for the offences punishable under Section 354, 504, 506 of Indian Penal Code, under Section 3(1)(w)(i)(ii), 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Section 7 and 8 of the Protection of Children From Sexual Offences Act,

2012, he be released on P.R. and S.B. of Rs.15,000/- each (in words rupees fifteen thousand only).

4) The appellant Macchindra Topya Kale be released on P.R. and S.B. of Rs.15,000/- -each (in words rupees fifteen thousand only). His bail before Trial Court.

5) Both the appellants shall not indulge in any criminal activity.

6) They should remain present before the Investigating Officer on every Saturday and Sunday between 10.00 a.m. to 02.00 p.m. till the filing of charge-sheet.

7) They shall not tamper with the evidence of the prosecution in any manner.

8) Fees of the appointed advocate in both the matters is quantified at Rs.6000/- (in words rupees six thousand only) collectively, to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.