

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.495 OF 2020

Parmeshwar Dattu Madan

... Appellant

Versus

1. The State of Maharashtra
2. Manisha d/o Shivaji Ghorpade

... Respondents

.....

Mr. S. J. Salunke, Advocate for appellant.

Mr. S. W. Munde, APP for respondent No.1 – State.

Mr. S. S. Dargad, Advocate for respondent No.2. (appointed)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14th October, 2020

ORDER :

. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of rejection of Criminal Bail Application No.1215 of 2020 by learned Additional Sessions Judge-2, Jalna on 04-09-2020. The appellant is apprehending his arrest in connection with Crime No.337 of 2020 dated 26-08-2020 registered with Badnapur Police Station, Dist. Jalna for the offences punishable under Sections 354-A(2) and 506 of Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as

the 'POCSO Act') and Sections 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act').

2. Heard learned Advocate Mr. S. J. Salunke for appellant, learned APP Mr. S. W. Munde for respondent No.1 – State and learned Advocate Mr. S. S. Dargard (appointed) for respondent No.2.

3. It has been vehemently submitted on behalf of the appellant that perusal of the FIR would show that the informant or the victim was not even knowing the appellant. In the summary of the FIR it is stated that the caste of the informant and victim was known to the present appellant. However, there is nothing in the main body of the FIR to show as to how they were knowing each other. Further, it is stated that the appellant was under the influence of liquor, therefore, whether the act was knowingly done is required to be considered. The learned trial Judge has rejected the regular bail application only on the ground that the victim is minor and belongs to Scheduled Castes and the offence is serious. His application under Section 439 of the Code of Criminal Procedure ought to have been allowed.

4. Per contra, learned APP as well as learned Advocate (appointed) for respondent No.2 strongly opposed the application. Immediately after the arrest of

the appellant, his medical examination has been got done and the medical report says that he was under the influence of liquor. At the relevant time, the victim was aged 15 years and when she had gone to bank with her father and father had gone just away to bring water, the incident has taken place. The security of minor girls is in danger when such persons are roaming.

5. At the outset, it is to be noted that the application which was filed by the present appellant was under Section 439 of the Code of Criminal Procedure and, therefore, considerations which are there under Section 18 of the Atrocities Act i.e. bar under the said Section will not come in way for consideration of the application. The informant has stated that the victim, who is 15 years, went to bank along with her father. It is stated that she called her mother from the mobile of one Gajanan Madan and, at that time, she was crying that her hand was pulled by a person who is staring at her with ill intention. It was also told by her that the father had gone to bring water. Informant went to the said place immediately where many people had gathered and it is her say that the accused was still there. She asked accused as to why he has behaved in such a way with her daughter, even at that time, again the appellant pulled hand of informant's daughter as a result of which, she fell down and accused had scuffled with informant. He was under the influence of liquor. According to the informant, at that point, appellant disclosed his name and told that whatever she want to do she is free to do that.

Thereafter, the father of the victim arrived and asked as to what has happened. Thereafter, they went to police station to lodge the report.

6. Perusal of the FIR would show that the incident had happened around 2.00 to 2.30 p.m. and the report has been lodged at 19.30 hours. The arrest of the accused would be thereafter. In the FIR, it is absolutely not mentioned that the people who had gathered at the said place had caught hold of the accused and those persons had handed over the accused to the police. The copy of MCR report would show that the accused was arrested at 23.45 hours. Therefore, even if it has come on record that at the time of medical examination, the accused was under the influence of liquor, we cannot presume that at 2.30 p.m., he was under the influence of liquor. Merely by saying that the offence is serious, the learned trial Judge cannot refuse to exercise its power of granting bail to any accused. The Hon'ble Supreme Court in catena of judgments has laid down the criteria to be seen while considering an application under Section 439 of the Code of Criminal Procedure. Those parameters ought to have been considered by the learned Special Judge. Another fact to be noted is that when the FIR is silent about the earlier acquaintance of the accused with the informant or her family members and all the while, even after they stood in front of each other, the informant does not say that she had recognized him and referred him as *isam* (person), came to know about name of the accused allegedly after he disclosed it

himself, it casts doubt about the statement made by the informant that the accused had knowledge about the caste of the informant. In order to attract the offence under Section 3(1)(w), the main ingredient i.e. required to be proved is that there should be intentional touching of women belonging to Scheduled Castes or Scheduled Tribes knowing that she belongs to Scheduled Castes or Scheduled Tribes. Words “knowing that she belongs to a Scheduled Caste or Scheduled Tribes” are there in Section 3(1)(w)(i) and 3(1)(w)(ii) under which the offence has been registered. The facts about that knowledge are missing here. As regards the other offences under Indian Penal Code as well as the POCSO Act, it cannot be stated that the custody of the appellant would have been required for the purpose of investigation. The learned trial Judge has failed in exercising its powers. In *Irshad Rubab Sawar and others Vs. The State of Maharashtra and another [Criminal Appeal No.425 of 2020 dated 20-08-2020]*, this Court has made observations regarding criterias which are not considered in an application for bail under Section 439 of the Code of Criminal Procedure involving offences under the Atrocities Act.

7. The act of the accused cannot be justified, if under the influence of liquor, he is outraging the modesty of women, but for that purpose asking him to languish him in jail till the trial is over, cannot also be the end result. Whether the custody of the applicant is required, whether the accused would be available for

trial etc. are the points which are required to be considered and after considering all these points, it can be certainly said that the learned trial Judge has not exercised the discretionary power and, therefore, the appeal deserves to be allowed, however, stringent conditions are required to be imposed. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The order passed by learned Additional Sessions Judge-2, Jalna in Criminal Bail Application No.1215/2020 dated 04-09-2020, is hereby set aside. The said application stands allowed.
- III) The appellant be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- IV) The appellant shall not tamper with the evidence of the prosecution in any manner.
- V) The appellant shall remain present before the Investigating Officer on every Monday, Wednesday and Saturday between 10.00 a.m. to 12.00 noon till conclusion of the trial.
- VI) The appellant shall not indulge in any criminal activity.

VII) Bail before the Trial Judge.

VIII) The fees of the appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services Authority Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

SCM