

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 CRIMINAL APPEAL NO.1234 OF 2019

LAKHAN @ VINOD S/O. KUMAR KAKADE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Appellant : Mr.Karpe Rahul R.
APP for Respondent No. 1: Mr. K.S.Patil
Advocate for Respondent No. 2 : Mr.Sunita G. Sonawane

...

WITH

954 CRIMINAL APPEAL NO.1300 OF 2019

SHUBHANGITAI W/O. SUDHIR NALAGE & ORS.
VERSUS
THE STATE OF MAHARASHTRA & ANR.

WITH

CRIMINAL APEAL NO.1302 OF 2019

LAXMAN VITTHAL NALAGE & ORS.
VERSUS
THE STATE OF MAHARASHTRA & ANR.

...

Advocate for Appellant : Mr.Karpe Rahul R.
APP for Respondent No. 1: Mr.R.D.Sanap
Advocate for Respondent No. 2 : Mr.Sonawane Sunita G.

...

CORAM : T.V.NALAWADE, &
M.G.SEWLIKAR, JJ.

DATE : 07th JANUARY, 2020.

PER COURT :

Criminal Appeal No. 1234 of 2019 is filed by
Lakhan @ Vinod Kumar Kakade, against the order made by

the learned Additional Sessions Judge, Shrigonda, District; Ahmednagar on Exh. 3 in Special Case No. 150 of 2019. The case is filed for the offence punishable under section 376, 354-A, 307, 323, 504, 506 r/w Section 34 of the Indian Penal Code (for short 'I.P.C.'), r/w Section 3 (1)(r)(s)(w) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocity Act, 1989) hereinafter referred to as ('Act of 1989') and for the offence punishable under Section 66 (e) of the Information Technology Act, 2000. The charge-sheet is filed in Crime No. 708 of 1019 registered at Shrigonda Police Station, District Ahmednagar. The application was filed for regular bail.

2. Criminal appeal No. 1302 of 2019 is filed by Laxman Vitthal Nalage, Sudhir Nalage, Rahul Nalage and Kumar Kakade against the order made by the learned Additional Sessions Judge, Shrigonda, on Exh. 1 of Misc. Application No. 233 of 2019. The aforesaid Criminal appeal No. 1302 of 2019 was filed for the relief of anticipatory bail.

3. Criminal Appeal No. 1300 of 2019 is filed by Shubhangi w/o Sudhir Nalage, Sunita w/o Kumar Kakade and Manda w/o Laxman Nalage against the order made on Exh. 1 of application No. 227 of 2019 passed by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar. Application was filed for the relief of anticipatory bail in the same crime. All the applications are rejected by the learned Additional Sessions Judge, Shrigonda.

4. Appeals are filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocity Act, 1989). The informant is party respondent and so her counsel was also heard.

5. Before considering the relevant facts and material collected by the police, it is necessary to mention some circumstances, which show that except Mandabai and Sudhir the appellants have apparently misused the process of law. They have probably used influence to see that they are not arrested. Some of them got interim relief from this Court, when the

previous proceedings filed by them for similar relief were rejected by this Court. The statements made and the record show that in the past applications filed for anticipatory bail on behalf of aforesaid applicants were rejected by the Sessions Court and those orders were challenged by filing Criminal appeal Nos. 949 of 2019 and 950 of 2019 before this Court. Except the applicants, Sudhir and Mandabai the other appellants from appeals had challenged the previous orders of Sessions Court. After hearing the learned counsel of parties, when this Court had expressed that this Court was not inclined to grant relief of anticipatory bail, the appeals were withdrawn on 9.10.2019. In those proceedings, arguments were advanced by learned Senior Counsel Mr. R.M. Dhorde for appellants. Now different counsel is representing them.

6. This Court made order on 9.10.2019, and in view of arguments advanced by the State at that time, appellants could have been arrested for purpose of investigation after 9.10.2019. No proceeding was filed

by them in Apex Court. It appears that the police had filed charge-sheet against the main accused Lakhan @ Vinod for the aforesaid offences and these appellants were shown as absconding accused. The present appellants Mandabai and Sudhir were also shown as absconding accused in the charge-sheet. It appears that after filing the charge-sheet, absconding accused again filed proceedings for anticipatory bail in the Sessions Court. It can be said that the Sessions Court could have taken the care to see that the absconding accused were asked to surrender. However, on merits, the Sessions Court rejected these applications filed for anticipatory bail by the appellants after filing of the charge-sheet.

7. The orders were made by the Sessions Court from 7.11.2019 to 22.11.2019. When the applications filed for anticipatory bail were rejected by the Sessions Court in the month of November and the regular Court (Division Bench which is assigned this work) was available for hearing of the proceedings, the proceedings were not filed before the Regular

Court and the proceedings came to be filed on 23.12.2019. The day 20.12.2019 was the last working day of this Court before Winter Vacation. These proceedings were filed when there was Vacation Court and when the learned Single Judge of this Court seats for hearing urgent matters. This circumstance cannot be ignored as these days practice is developed to see that the regular Courts is avoided when regular Court has rejected the previous similar proceeding. That way some interim orders are obtained from the Vacation Court. In the present matter also the appellants from Criminal appeal No. 1300 of 2019 argued before the Single Judge i.e. before the Vacation Court on 26.12.2019 and ad-interim anticipatory bail was granted in their favour. The order made by the learned Single Judge does not show the circumstance that these appellants were shown as absconding accused, was brought to the notice of the learned Single Judge, during arguments. The circumstance that in the past this Court had refused the anticipatory bail by the order dated 9.10.2019, is also not mentioned in the interim order.

8. It appears that, after granting interim relief by the Vacation Court, supplementary charge-sheet came to be filed against those appellants and bail bonds were given in Police Station by those appellants on the basis of interim order. Thus, even when these appellants were shown as absconding accused in the main charge-sheet, on the basis of interim order made by this Court, a trick was played and by giving the bail bonds in the Police Station, supplementary charge-sheet was filed against these appellants. All these circumstances show that process of law was misused and concerned were misled. Only on these grounds, appeal filed by these appellants that is Criminal Appeal No. 1300 of 2019, filed by Shubhangi and Sunita can be dismissed. As Mandabai had not come before this Court in the past, it can be said that Mandabai had not deceived the system, however, the fact remains that she has come with Shubhangi and Sunita and the same Counsel represented Mandabai.

9. In the past, no appeal was filed by appellant Sudhir and fortunately interim relief is not granted in his favour by Vacation Court in appeal No. 1302 of 2019. As no relief is granted to male accused, aforesaid trick could not be played and supplementary charge-sheet is not filed against them and still they are shown as absconding accused. The circumstance that they are absconding since long can be considered against them.

10. In the past, this Court had heard Mr. R.N. Dhorde, the learned Senior Counsel for aforesaid appellants on merits and on 9.10.2019 and the record of investigation was considered by this Court. In brief this Court is now mentioning the allegations and material available against the appellants.

11. The prosecutrix gave report against all these appellants on 24.7.2019 and the crime is registered for the aforesaid offences. She was living with her mother and her father has deserted her mother. Thus, only prosecutrix and her mother were living in village

Savangi. The main accused Lakhan @ Vinod was her neighbour. It is her contention that from 2014 Lakhan was after her, he was staring her and to induce her he used to make gestures. Then he started saying to her that he likes her and would like to marry with her. She had flatly refused for the same and she was studying at that time, but Lakhan continued his activities and on one day he forcibly took her at lonely place, gave threats to her that he would do something to himself like he will commit suicide and he would put blame on her and on her relatives, if she refused to keep contact with her. Due to such threats she said that she was ready to marry with him. Then, Lakhan started visiting her residential place. On one occasion by giving threats and on the point of sharp weapon, he raped her. She has mentioned various misbehaviours of Lakhan in the F.I.R. It is her contention that Lakhan had done Video shooting and Photos were taken of their physical relationship and up to 1.2.2019, he had sexually exploited her. She has mentioned the places where she was sexually exploited by Lakhan. The things had started when she was minor.

12. It is the contention of the prosecutrix that when the maternal uncle of main accused and others learnt about their relationship, the maternal aunt and father of appellant made her to consume poison. It is her contention that she was admitted in the hospital by her relatives and she was treated there. She received treatment from 1.2.2019 to 7.2.2019. It is her contention that due to poverty she could not take action against any of the accused. It is her contention that even after aforesaid incident of making her to consume poison, Lakhan wanted to sexually exploit her and he was giving threats that he would circulate aforesaid photographs and Video shooting on Facebook.

13. It is the contention of the prosecutrix that on 21.1.2019 she had been to Shrigonda Police Station to give report. It is her contention that from vicinity of police station appellant Lakhan forcibly took her away. It is her contention that on that day appellant Sudhir slapped and abused her in the name

of her caste. It is her contention that Sudhir said that their community keeps contacts with girls of scheduled casts for satisfying their lust and said that she cannot dream to marry with a person of higher caste. He also gave threats of finishing her family by saying that his wife is village Sarpanch. She made allegations that Lakhan also gave abuses naming her scheduled caste and on that day all the accused assaulted her with fist blows and kicks. It is contention of the prosecutrix that she was then made to leave village by giving threats. It is her contention that Shubhangi is Sarpahch of village and she had given direction to the persons of village to drove her out of village. It is her contention that their household articles were thrown on road and they were made to leave village. Thereafter, they shifted to other village. It is her contention that after shifting to other place she could lodge report in the police station.

14. This Court has carefully gone through the record of medical examination. The record of medical

examination supports the allegations made by the prosecutrix, that she was sexually exploited by Lakhan. All the circumstances are considered by the Sessions Court and thereafter the anticipatory bail was refused to appellants.

15. It was submitted by learned counsel for the appellants that allegations can be said to be mainly against Lakhan and the other appellants cannot be said to be involved in the offence punishable under the aforesaid Special Act under Section 376 of I.P.C. The specific allegations made are already mentioned. There are allegations that all the appellants made prosecutrix and her family to leave the village. She belongs to scheduled caste. This offence falls under Section 3 (1) (z) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

16. Though many legislations are made by the Central Government and the State Government to protect the persons of Scheduled Caste and Scheduled Tribes, the mentality of many persons like appellants is not

changed. By using political influence and money power persons of higher castes like Lakhan, are exploiting to the ladies of the Scheduled Caste and Scheduled Tribes. The persons like Lakhan can do such activities only when their relatives supports them. The close relatives of Lakhan ought to have taken action against Lakhan, but the circumstances show that appellants, close relatives of Lakhan supported Lakhan and due to that the prosecutrix and her family is required to leave the village. Such incidents cannot be taken lightly. The provisions of Section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, shows that when such offence is committed there is bar to grant relief of anticipatory bail. Though charge will not be framed under Section 376 of Indian Penal Code against these appellants seeking anticipatory bail, aforesaid provisions can be used against them. In addition to this, there are other circumstances, which are discussed at the beginning of the order of this Court. They show as to how these persons have misused provisions of law and have mislead even the Court. It is unfortunate that police

filed supplementary charge-sheet even when proceedings were still pending in this Court and when these appellants were shown as absconding accused in the charge-sheet. Due to all these circumstances, this Court holds that relief of anticipatory bail cannot be given to these appellants. Though there is record to show that poison was not probably forcibly administered and due to harassment the prosecutrix had consumed poison, the fact remains that all these things happened due to activities of main accused Lakhan and persons helping to Lakhan.

17. The learned counsel for the appellants seeking relief of anticipatory bail has placed reliance on the decision of Apex Court in ***Criminal Appeal No. 1250 of 2003 decided on 8.10.2003 "Bharat Chaudhary and Anr. Vs. State of Bihar and Anr"***. The Apex Court has observed that about the use of provisions of Section 438 of Code of Criminal Procedure. The facts of that case were totally different. In the present matter, the provisions of aforesaid special enactment are required to be

considered by this Court and the relevant facts and circumstances of present matter are already quoted. It is unfortunate that the investigating agency also helped at least some accused. When interim relief is given, the investigating agency is not expected to take such steps as after rejection of main application filed for anticipatory bail police can arrest accused and make further investigation. For all these circumstances, this Court holds that this is not fit case to grant anticipatory bail.

18. Lakhan is behind the bars from 25.3.02019. In ordinary circumstances this Court would have considered the case of Lakhan in different manner but due to aforesaid circumstances, this Court holds there is possibility of influencing of witnesses and tampering of prosecution evidence if, Lakhan is allowed to come out on bail. This Court is not inclined to release appellant Lakhan on bail at this stage. In the result, all the appeals stand dismissed.

19. The learned counsel for appellants submitted

that he wants to file proceedings in Apex Court, and so interim relief given in favour of two ladies may be continued. This relief is refused.

[M.G.SEWLIKAR, J.]

[T.V.NALAWADE, J.]

mahajansb/