

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.923 OF 2019

ANIL BABAN KHADE

)...APPELLANT

V/s.

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

Ms.Sandhya Mailagir i/b. Mr.Anil Joshi, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 9th MARCH 2020

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the order dated 21st June 2019 passed by the learned Special Judge and Additional Sessions Judge, Kalyan, thereby rejecting his application under Section 438 of the Code of Criminal Procedure seeking anticipatory bail in Crime No.I-216 of 2019 registered with Kalyan Police Station for offences punishable under Sections

376 and 417 of the Indian Penal Code, under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for the sake of brevity) as well as under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as S.C.S.T. (Prevention of Atrocities) Act for the sake of brevity).

2 Heard the learned counsel appearing for the appellant/accused. She argued that averments in the First Information Report (FIR) that the appellant/accused had given a cell phone to the victim female child in the year 2017 is per se false as that cell phone was ordered in the year 2018. For that purpose, the learned counsel for the appellant/accused sought to rely on print of some message with title Jadhav Sir. It is further argued that the victim female child is more than 15 years of age. Her FIR shows her date of birth as 13th March 2000 whereas other documents are giving different dates of birth. It is also argued that the incident did not take place in the year 2017. By drawing my attention to the FIR, it is argued that in the meeting dated 8th

March 2019, the appellant/accused was not present. With this, according to the learned counsel for the appellant/accused, the learned Special Judge erred in rejecting the application for grant of anticipatory bail.

3 The learned APP opposed the appeal by contending that during the course of investigation, date of birth of the victim female child is ascertained from the school record and her School Leaving Certificate shows her date of birth as 13th March 2001. Even if the date of birth is assumed to be 13th March 2000, as stated in the FIR, still the victim female child was below 18 years of age at the time of the incident.

4 I have considered the submissions so advanced and also perused the material placed on record.

5 The victim female child alleged that her date of birth is 13th March 2000. She lodged the FIR against the appellant/accused on 13th April 2019. Allegations are to the effect that the

victim female child used to reside in the neighbourhood of the appellant/accused. When she had been to the house of the appellant/accused for sleeping with her sister-in-law, the appellant/accused slept with her stealthily during night hours. Then, love relation between them developed and by promising her to marry, in the year 2017, the appellant/accused had committed sexual intercourse with her and subsequently with same promise, he used to repeat that act frequently. Ultimately, her parents met parents of the appellant/accused and disclosed them about love relation between the couple. The FIR further mentions that on 8th March 2019, father and brother-in-law of the appellant/accused visited house of the victim female child and discussed regarding marriage. Subsequently, they met parents of the victim female child on 13th March 2019 and agreed for marriage of the appellant/accused with the victim female child. They informed her parents that preparation for marriage should be started. When parents of the victim female child were preparing for marriage ceremony, father of the appellant/accused telephonically informed that the appellant/accused had already married to a girl from

their community on 22nd March 2019. They offered some money to parents of the victim female child.

6 Averments in the FIR make it clear that on promising to marry her, the appellant/accused had developed love relations with the victim female child, and subsequently, indulged in sexual relations with her. She belongs to Scheduled Caste (Mahar). Parents of the appellant/accused initially protested but subsequently gave assurance of marrying the appellant/accused with the victim female child in the meeting between elders of both families. Averments in the FIR indicate that consent of the victim female child was not a free consent and she had not attained the age of consent. Her date of birth, as per school record, is 13th March 2001.

7 In this view of the matter, no case for grant of anticipatory bail was made out before the learned Special Judge and as such, the learned Special Judge had rightly rejected the application for anticipatory bail.

8 No infirmity can be found in the impugned order. The appeal is, therefore, devoid of merits and the same is dismissed.

(A. M. BADAR, J.)

Arti V.
Khatate

Digitally
signed by
Arti V.
Khatate
Date:
2020.03.11
17:22:18
+0530