

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 287 OF 2020

Suraj @ Durgaprasad Ashok Choube
..vs..
State of Maharashtra, thr.P.S.O and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mir Nagman Ali, Advocate for the appellant.
Shri H.R. Dhumale, A.P.P. for the respondent no.1-State.

CORAM : VINAY JOSHI, J.
DATE : 10/09/2020

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Being aggrieved and dissatisfied by the order of rejection of regular bail by the Sessions Court vide order dated 24.07.2020 this appeal has been preferred under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989(hereinafter referred as "the SC and ST Act"). The appellant is arrested by the Police of Ballarshah Police Station in Crime No. 402 of 2020 under allegations of committing offence punishable under Sections 498-A, 315, 504, 506 read with 34 of the Indian Penal Code and Section 3(1)(r)(s), 3(2)(v) of the SC and ST Act.

3. The appellant seeks regular bail by claiming

innocence, false implication, inadequacy of evidence, ready to abide by condition etc.,. The State resisted bail vide reply affidavit. Moreover, respondent no. 2(Informant) also resisted bail by submitting written reply in resistance. The bail is resisted on the premise that the alleged offences are of serious nature, the appellant is backing the antecedents, if he is release on bail, he would cause harm to the Informant.

4. The crime was registered at the instance of F.I.R. dated 06.06.2020. The Sessions Court initially granted interim bail, however, vide its final adjudication dated 24.07.2020 has refused to enlarge appellant on bail. From 04.08.2020 onwards, the appellant is in jail. At the inception it is to be noted that registration of Crime is out come of matrimonial hassle. The Informant is a wife of the appellant-accused. It is the prosecution case, that in past also there has been matrimonial harassment amounting to cruelty within the meaning of Section 498-A of the Indian Penal Code for which crime was registered in the preceding year. The Informant-wife belongs to the Scheduled Cast whilst appellant did not. Therefore, the earlier offence was also under the provisions of the SC and ST Act against the appellant.

5. It is further prosecution case, that after few days from the earlier report the couple has patched their differences and started to live together from

24.09.2019 onwards. After three months, the Informant perceived that she was carrying pregnancy. After realizing said fact, other co-accused who are the relatives of the appellant-accused had abused the Informant in the name of cast. It is alleged that on 11.03.2020, 15.03.2020 and 16.03.2020 the appellant persistently insisted the Informant to consume pills so as to abort her pregnancy. Then the Informant stated the incident dated 13.05.2020 on which other co-accused again abused the Informant in the name of caste. After reading the F.I.R. it reveals that there are no allegations against the appellant-accused about abusing the Informant in the name of Cast. The allegations are about effort of appellant in preventing the pregnancy and a bid to see that child would not born alive. While deciding the entitlement of bail various factors including nature of accusation, gravity of offence, prescribed punishment, chance of flying from justice have to be seen.

6. The appellant is in custody from 04.08.2020. Admittedly, the investigation is complete and Police are about to file charge-sheet, which is evident from the submissions recorded by this Court in its order dated 21.08.2020. It appears that, only part remain for Investigating Agency is to collect specimen handwriting of appellant-accused. Therefore, it can be safely taken that only formalities of filing final report has remained. The alleged offence punishable under

Section 315 does not attract punishment of death or life imprisonment. Already the appellant has faced custodial interrogation and investigation is complete. Certain antecedents are shown by respondent no. 2 while resisting the bail. It appears that some offences are registered which are under Section 138 of the Negotiable Instrument Act 1881, Section 65 of the Bombay Prohibition Act 1949, and offence of assaulting Public Servant. The entire episode appears to be matrimonial unrest between the couple. Earlier complaint was filed but there was settlement resulting into reunion. But the things repeated. Certainly, the safety of the Informant is to be looked upon while deciding the appellants' entitlement to seek his liberty.

7. Having regard to the nature of accusation, the completion of investigation the appellant can be released on bail on putting stringent terms. Certainly, if the appellant commits breach of any condition then it would give rise to the State to move this Court for cancellation.

8. In view of that following order is passed :

(a) The appeal stands allowed.

(b) The impugned order dated 24.07.2020 passed in Miscellaneous Criminal Application No. 592 of 2020 is hereby quashed and set aside.

- (c) The appellant-accused namely Suraj @ Durgaprasad Ashok Choube is release on bail on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.
- (d) The appellant-accused shall attend concerned Police Station for giving specimen handwriting on written requisition by the Police to that effect.
- (e) The appellant shall not enter in the limits of Ballarshah Taluka for the period of six months from his release except for compliance of clause(d).
- (f) The appellant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

9. This order be communicated to the Counsel appearing for the parties, either on the email address or on WhastApp or by such other mode, as is permissible in law.

JUDGE

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