

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

CRIMINAL APPEAL NO.780 OF 2019

(Aman s/o Ramesh Shivarkar Vs. The State of Maharashtra thr. PSO PS Warora, Dist.
Chandrapur and another)

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

Court's or Judge's orders.

 Shri A.C. Jaltare, Advocate for Appellant.
 Shri V.A. Thakare, APP for Respondent 1/State.
 Shri U.K. Bisen, Advocate for Respondent 2.

CORAM: ROHIT B. DEO, J.

DATE: 5th MARCH, 2020.

This appeal is directed against the order dated 14.11.2019 rendered by the Special Judge, Warora in Miscellaneous Criminal Application 380/2019 whereby the said application seeking pre-arrest bail for offences punishable under section 452, 354, 294, 506, 323 r/w 34 of I.P.C. and section 3(1)(w)(i)(ii), section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (Atrocities Act for short) is rejected to the extent of the present appellant. The co-applicant who is the mother of the appellant is granted pre-arrest bail.

2] The first information report is lodged by respondent 2 Sau. Sagar @ Shobhana w/o Pramod Chaudhary. The role which is attributed to the appellant is restricted to the incident which allegedly occurred on 01.10.2019. The gist is that the informant went to the tap belonging to one Manohar to fetch water, the mother of

the appellant Durga picked up a quarrel with the informant, and an altercation ensued. When the informant returned home Durga and her son Aman – the present appellant, entered the informant's court-yard and assaulted her physically. The appellant hurled filthy abuses, is the other allegation.

3] The order impugned records that the respondent 2 – informant opposed the pre-arrest bail strongly. The learned Special Judge was pleased to observe that the first information report does not make out a *prima facie* case of offence punishable under the Atrocities Act. The learned Special Judge however, held that offence punishable under section 452 and 354 of the IPC is *prima facie* made out against the appellant Aman. It is on this premise, that the pre-arrest bail is rejected.

4] The respondent 2 – informant/complainant appeared in this Court and filed an affidavit dated 13.01.2020. Paragraph 2 of the affidavit reads thus:

2. That the respondent No.2 submits that the contents of the FIR are concerned the same are not as per the version of respondent No.1. The respondent had never made allegation as has been appeared in the FIR. However, the respondent No.2 has made complaint only with regard to the quarrel between her and the mother of the appellant and appellant. Under the circumstances, I do not want to prosecute the appellant for offence for which Crime No.1218/2019 is registered by the respondent No.1.

5] The respondent 2 – informant/complainant

withdrew the affidavit dated 13.01.2020 by filing affidavit dated 03.03.2020. The back-drop of the withdrawal of the affidavit dated 13.01.2020 is the order of this Court dated 24.02.2020, paragraphs 4, 5, 6 and 7 of which read thus:

4. Statement in the affidavit is that the first information report is not recorded as per the version given by the informant. This is difficult to believe. The first information report is graphic in content. In any event, the presumption is that the police have done their duty honestly, unless the contrary is proved.

5. Either way, issue involved is serious. Either the course of justice is being subverted by the present appellant and the informant acting in collusion or the police officer who recorded the first information report has acted malafide. The second possibility is remote since the contents of the first information report are consistent with the statement recorded under 164 of the Criminal Procedure Code.

6. The respondent 2 shall file explanation showing cause why appropriate action for perjury and / or contempt should not be initiated in the event it is found that the contents of the affidavit dated 13.1.2020, are not factually correct.

7. The appellant shall also file an affidavit showing cause why the action under the contempt jurisdiction should not be initiated if this Court finds that the appellant and the respondent 2 have colluded to subvert the course of justice.

6] The justification which is given in the affidavit dated 03.03.2020 is that the earlier affidavit dated 13.01.2020 was drafted in hurry and is therefore, not happily worded. The affidavit dated 03.03.2020 records an

unconditional apology. It is categorically stated that there was no intention to cast any aspersion on the police official who recorded the first information report.

7] In so far as the merits of the appeal are concerned, in my considered view, the appeal deserves to be allowed. It is obvious that the learned Special Judge has attributed to the present appellant role, which the FIR attributes to his brother Shankar. It is not even an allegation in the first information report that the appellant entered the residential house of the informant and threatened her with rape or violent death. Further, it is not even the case of the prosecution that custodial interrogation of the appellant is necessary.

8] While I am allowing the appeal, I am constrained to record that the appellant and respondent 2 appear to have colluded and acted hand in glove in an attempt to pollute the stream of justice. Respondent 2 opposed the pre-arrest bail in the Special Court. No grievance was then made that the police did not record the first information report correctly or as narrated by the respondent 2. In any event, the presumption is that the public servant discharges duty in accordance with law. While the affidavit dated 13.01.2020 was withdrawn after I took serious note of the attempted subversion of the process of law, the material on record strongly indicates an attempt to take the process of law for a ride. Conveniently, and at the drop of the hat, an allegation was made that the first information report was not recorded as per the say of the informant.

The withdrawal of the said allegation and the apology to the police does not dilute the seriousness of the misconduct. The apology can only be a mitigating circumstance. I am further satisfied that the respondent 2 filed the affidavit dated 13.01.2020 to oblige the appellant. In this view of the matter, I am inclined to saddle costs on the appellant and respondent 2, the payment of which costs shall be condition precedent for this order to come into effect.

9] The appellant and the respondent 2 shall pay cost of Rs.25,000/- each, which shall be deposited in the trial court. The said amount shall be transferred to the account of the Police Welfare Fund of the District.

10] Subject to the payment of costs, as directed *supra*, the appeal is allowed.

11] In the event of arrest in Crime 1218/2019 for offences punishable under section 452, 354, 294, 506, 323 r/w 34 of I.P.C. and section 3(1)(w)(i)(ii), section 3(2)(va) of the Atrocities Act registered with Police Station Warora, District Chandrapur the appellant shall be released on furnishing P.R. bond of 25,000/- with a solvent surety of like amount.

11] List this disposed of appeal after three weeks for reporting compliance.

JUDGE