

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.21 OF 2021

Govind Balaji Dumpalwar,
Age 47 yrs., Occ. Service,
R/o Bhendegaon, Tq. Mukhed,
Dist. Nanded.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra
Through the Officer Incharge,
Mandvi Police Station, Mandvi,
Tq. Kinwat, Dist. Nanded.
- 2 The Sub Divisional Police Officer/
The Deputy Superintendent of Police,
Sub Division, Mahur, Dist. Nanded.
- 3 XYZ (under guardian)
Ashok Madavi,
Age 45 yrs., Occ. Agri.,
R/o Wai Bazar, Tq. Mahur,
Dist. Nanded.

... Respondents

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the
appellant

Mr. S.B. Narwade, APP for respondent Nos.1 and 2

Mr. H.V. Tungar, Advocate (appointed) for the respondent No.3

...

WITH
CRIMINAL APPEAL NO.22 OF 2021

Govind Balaji Dumpalwar,
Age 47 yrs., Occ. Service,
R/o Bhendegaon, Tq. Mukhed,
Dist. Nanded.

... **Appellant**

... **Versus** ...

- 1 The State of Maharashtra
 Through the Officer Incharge,
 Mandvi Police Station, Mandvi,
 Tq. Kinwat, Dist. Nanded.
- 2 The Sub Divisional Police Officer/
 The Deputy Superintendent of Police,
 Sub Division, Mahur, Dist. Nanded.
- 3 XYZ (under guardian)
 Bhimrao Jugnake,
 Age 40 yrs., Occ. Agri.,
 R/o Gondkheda, Tq. Mahur,
 Dist. Nanded.

... **Respondents**

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the
appellant

Mr. S.B. Narwade, APP for respondent Nos.1 and 2

Mr. H.V. Tungar, Advocate (appointed) for the respondent No.3

...

WITH
CRIMINAL APPEAL NO.23 OF 2021

Govind Balaji Dumpalwar,
Age 47 yrs., Occ. Service,
R/o Bhendegaon, Tq. Mukhed,
Dist. Nanded.

... **Appellant**

... **Versus** ...

- 1 The State of Maharashtra
 Through the Officer Incharge,
 Mandvi Police Station, Mandvi,
 Tq. Kinwat, Dist. Nanded.
- 2 The Sub Divisional Police Officer/
 The Deputy Superintendent of Police,
 Sub Division, Mahur, Dist. Nanded.
- 3 XYZ (under guardian)
 Sanjay Parchake,
 Age 45 yrs., Occ. Agri.,
 R/o Jarurkhedi Bazar, Tq. Kinwat,
 Dist. Nanded.

... **Respondents**

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the
appellant

Mr. S.B. Narwade, APP for respondent Nos.1 and 2

Mr. H.V. Tungar, Advocate (appointed) for the respondent No.3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 27th APRIL, 2021

PRONOUNCED ON : 08th JUNE, 2021.

JUDGMENT :

1 **Admit.**

2 Present appeals have been filed by the same appellant under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to challenge the orders passed by learned Special Judge under the POCSO as well as Atrocities Act in Special (POCSO) Case Nos.26/2020, 25/2020 and 34/2020 respectively at Exh.Nos.3, 7 and 4 respectively, rejecting the applications under Section 439 of the Code of Criminal Procedure, 1973 on 03.11.2020. It will not be out of place to mention here that all these cases are arising out of the First Information Report lodged by three different minor girls. The offences those are registered against the present appellant in all those cases are under Section 354, 354-A, 323, 504 of the Indian Penal Code, 1860, under Section 3(1)(w) (i), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 8, 10, 12, 21 of the Protection of Children from Sexual Offences Act, 2012. All those offences came to be registered with Mandvi Police Station, Mandvi, Tq. Kinwat, Dist. Nanded vide

Crime Nos.91/2019, 90/2019 and 94/2019 respectively. It can be seen that the appellant came to be arrested in each of the case one after another. Now, in all the cases the investigation is complete and charge sheet has been filed.

3 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the appellant, learned APP Mr. S.B. Narwade for the respondent Nos.1 and 2 and learned appointed Advocate Mr. H.V. Tungar for the respondent No.3, in all matters.

4 It has been vehemently submitted by learned senior counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh that the learned Special Judge failed to consider that now, since the investigation is over, the further physical custody of the appellant is not required for the purpose of investigation. Perusal of each of the case would show that the incident is stated to have occurred somewhere on the last day of Navratri in 2019. All the girls are taking education in the residential school having hostel facility. The prosecutrix in Crime No.90/2019 appears to have lodged the report regarding the alleged incident that took place on 18.12.2019 and the prosecutrix in Crime No.91/2019 says that incident with her had happened on the last day of Navratri, but she had not lodged any report about the same. The prosecutrix in Crime No.94/2019 dated 29.12.2019 has stated that the offence against her had taken place on 14.08.2019.

Therefore, it is apparent that in almost all the cases there is delay in lodging the report. This appears to be the false involvement of the present appellant. The contents of the FIR as well as the statements of the witnesses/victims under Section 164 of Cr.P.C. appear to be after thought and also amount to creation of false evidence against the present appellant. No incriminating article has been recovered at the instance of the present appellant. It is surprising fact that none of the victims had ever disclosed the incident to anybody. With some ulterior motive the present appellant has been framed. The offences under Section 8 and 10 of POCSO Act have been erroneously invoked. Even the school authorities have now been made co-accused in two cases i.e. in Crime No.90/2019 and 94/2019 against whom it appears that offence under Section 12 and 21 of the POCSO Act and Section 75 of Juvenile Justice Act have been invoked. The possibility of defaming the institute as such cannot be ruled out. It would take long time to stand the trial and, therefore, the appellant deserves to be released on bail. He is ready to abide by the terms of the bail.

5 Per contra, the learned APP Mr. S.B. Narwade and learned appointed Advocate Mr. H.V. Tungar strongly objected the appeals and submitted that as per the prosecution story, the present appellant was given the job of taking care of the girls, who were residing in the hostel. It also

appears that two co-accused in other two matters i.e. Crime No.90/2019 and 94/2019 were Headmistress and Residential Guardian, however, in all the three First Information Reports the informants have clearly stated that the present appellant was given the job of a Rector of the hostel. The story told by each of the victim/prosecutrix is that on one or the other count the present appellant went near them and with sexual intent either he had pressed the breast of the girls and even for one victim, when she made complaint about stomach ache he had taken his top upwards and by placing his hands on her stomach he had pressed her breasts. When she had even after pushing him started running from the hostel, the appellant had ran behind her and by catching hold of her hand he was dragging her. She had even disclosed the said fact, after relieving herself from the clutches of the appellant, to the cook of the hostel and then at that place she could meet the other two victims, who had the same experience of the appellant. It is also stated that when she told about the said fact to other girls, the present appellant had gone near them and had prayed for pardon. But when they told that they will not keep quiet, even the appellant had tried to beat the girls, but then girls had taken sticks in their hands and threatened to assault him, the appellant fled away from the spot. It can rather be expressed prima facie, taking into consideration those contents that this is the courage, that is, required to be shown by the girls and ladies and they are not supposed to

suffer such illegal advancements and injustice.

6 The statements of all the victims under Section 164 of Cr.P.C. as well as under Section 161 of Cr.P.C. are consistent enough. No doubt, it has been tried to be pointed out that the informant/victim in one case is witness in another and that is how the evidence has been collected and, therefore, the objection has been taken by the appellant that he has been framed. Those submissions on behalf of the appellant do not appeal to this Court, for the simple reason is that the incident has taken place in a closed institute or in the vicinity of the institute and, therefore, as per the story, when one informant disclosed the fact, which had happened with her to another and then another girl lodged the report in respect of the incident that had taken place with her, but at that time she had no courage to lodge the report, then only those persons could be the witnesses in each other case. Now, it would be for the concerned Court to appreciate the evidence, taking into consideration the examination-in-chief and the cross-examination of all the witnesses, as to whether the prosecution would be able to prove its case beyond reasonable doubt or not. The allegations against the appellant are such that it not only shakes the confidence of the girls but it is also affecting the girl students, who are taking education by staying in hostel. It will not be out of place to mention here that all the victims are members of Scheduled

Tribe. The appellant has every knowledge about the same, for the simple reason that the hostel and the institute was for the benefit of the members of the Scheduled Tribe only. In spite of this fact, if he has behaved with the victims in such a way, who are admittedly minors, then not only on the legal aspects but on moral aspects also the appellant is not entitled to release because while dealing with a bail application the Courts are also required to consider the impact of the order on the society at large. This is not a fit case where the appellant ought to have been released in all the cases.

7 The learned Trial Judge, that is, Special Judge under the POCSO as well as Atrocities Act, has not erred in rejecting the application. All the aspects have been considered properly, correctly and legally. There is no reason to interfere in the impugned order. All the appeals stand dismissed. The fees of the appointed Advocate is quantified at Rs.5,000/- (Rupees Five Thousand only) per case, that is, in all Rs.15,000/- (Rupees Fifteen Thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)