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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

71 CRIMINAL APPEAL NO.156 OF 2021

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

...

Mr R. R. Karpe, Advocate for appellant;
Mr S. R. Yadav-Lonikar, A.P.P. for respondent No.1;
Smt. S. G. Sonawane, Advocate for respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 20th September, 2021

PER COURT:

1. By this appeal, the appellant, who is an accused in First Information Report bearing Crime No.0708/2019, registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar for offences punishable under Sections 376, 354-A, 307, 323, 504, 506 read with Section 34 of the Indian Penal Code; Section 3 (1) (r)(s)(w) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2000 and Section 66 (e) of the Information Technology Act, has approached this Court for the third time for seeking regular bail.

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2. Prayer clause 18-C reads as under :

“18-C) By allowing this Criminal Appeal the appellant may kindly be released on regular bail in connection with the FIR bearing Crime No.0708/2019 registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar for the offences punishable under Section 376, 354-A, 307, 323, 504, 506 r/w 34 of Indian Penal Code r/w Section 3 (1) (w) (R)(S) of S.C. & S.T. Act and Section 66 (e) of the Information Technology Act, 2000 and for that purpose necessary orders be passed.”

3. We have heard the learned Counsel for the appellant and the respondents extensively on 08/09/2021, 09/09/2021, 15/09/2021 and today.

4. When the petitioner approached this Court in Criminal Appeal No.1234/2019 for seeking regular bail, this Court has recorded the circumstances in which the prosecutrix was put to sufferings in paragraph Nos.11 to 19 of it's order dated 07/01/2020 as under :

“11. The prosecutrix gave report against all these appellants on 24.7.2019 and the crime is registered for

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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

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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

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her contention that Shubhangi is Sarpanch 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 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.

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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 the 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

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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 25.3.2019. In ordinary circumstances this Court would have considered the case of Lakhan in different manner but due to aforesaid circumstances, this Court holds that 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.”

5. From the above reproduced order, it is apparent that this Court assigned reasons for refusing regular bail to the present appellant.

6. The appellant approached the Honourable Apex Court in Special Leave to Appeal (Cri.) Nos.584-585/2020. While dismissing the Special Leave Petition, the Honourable Apex Court observed in it's order dated 03/02/2020 as under :

“On hearing learned counsel for the petitioner, we are of the view that the petitioner be permitted to renew the

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request for bail before the trial Court after the evidence of the prosecutrix is recorded.”

7. As the recording of the testimony of the prosecutrix got prolonged on account of COVID-19 pandemic and the National Lock-down, the appellant once again approached this Court in Criminal Appeal No. 650/2020 when the testimony of the prosecutrix was yet to be recorded. By an order dated 15/12/2020, this Court rejected the appeal and permitted the appellant to renew his request after testimony of the prosecutrix is recorded, in view of the order of the Honourable Supreme Court of India.

8. We are informed by the Investigating Officer as well as the learned Advocate representing the prosecutrix that her (prosecutrix) testimony has been recorded. Such recording commenced on 20/01/2021 and concluded on 10/02/2021. It is also conceded that all other accused in the case have been granted regular bail more than a year ago.

9. The learned A.P.P. has strenuously opposed this appeal contending that the appellant and his family members are

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influential people. They are likely to influence other material witnesses. Releasing the appellant on bail would jeopardize the trial in the matter. On the basis of the record and from specific instructions from the Investigating Officer, the learned A.P.P. submits that none of the accused who are already on regular bail have been alleged to have influenced either the prosecutrix or any of the witnesses in the last one year. No complaints are registered against any of them either in the police station or before the Trial Court.

10. The learned Advocate for the prosecutrix submits that if the appellant is released on bail, he would immediately start taking steps for influencing the other witnesses. The prosecutrix belongs to a Backward Class and comes from a poverty stricken family. The appellant is well connected with influential people. She, therefore, prays that the appeal be dismissed.

11. The appellant has been arrested on 25/03/2019. The Honourable Apex Court had observed in its order dated 03/02/2020 that the appellant could renew his request for regular bail after the testimony of the prosecutrix is recorded. This has

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occurred almost nineteen months ago. The learned Advocate for the appellant submits that the appellant is willing to abide by any conditions that this Court may impose upon him, including the condition of staying away from the village or away from the district. We called upon the learned Advocate for the appellant to state whether the appellant would reside beyond 100 kms. radius from the village Sangvi Dumala, Tq. Shrigonda. He stated that the appellant would abide by this condition as well.

12. The investigation in the matter is complete. Recording of the testimony of the prosecutrix was a sensitive issue and that has also been completed. Other accused have been on bail for more than a year and half. None of them are alleged to have influenced on the prosecutrix or other witnesses till today. Detention of the accused in jail, is not necessary.

13. Considering that the trial in this Court has got delayed due to circumstances like COVID-19 pandemic, we had called upon the learned A.P.P. to take instructions from the Investigating Officer as to what efforts have been made to collect the Forensic Science Laboratory reports of all such items/articles that had been

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forwarded to the said laboratory for analysis. He tenders a compilation of 45 pages along with the covering letter addressed to him by the Investigating Officer, dated 18/09/2021, with sticker flags. The same are taken on record and collectively marked as 'X' for identification.

14. We find from the compilation of documents 'X' that on several occasions, the Investigating Officer as well as the learned Trial Court has forwarded request letters to the Forensic Science Laboratory, Santacruz, Kalina, Mumbai for the expeditious supply of the Forensic Laboratory analysis reports, but in vain.

15. In view of the above, this appeal is allowed. The appellant / accused Lakhan @ Vinod s/o Kumar Kakade be released on bail in Crime No.0708 of 2019, registered by the Police Station Shrigonda, District Ahmednagar :

(a) On furnishing P.B. and S.B. of Rs.1,00,000/- (Rs. One Lac) with one solvent surety of Rs.1,00,000/- (Rs. One Lac) or two solvent sureties of Rs.50,000/- (Rs. Fifty thousand) each, if not detained in any other crime;

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(b) The appellant shall reside away from village Sangvi Dumala, Tq. Shrigonda beyond a radius of 100 kms. till the completion of the recording of the testimony of material witnesses and when he would be permitted to attend the Court proceeding;

(c) If he is found to have breached any of the above condition of staying away from the village, it would be a good ground for cancellation of bail;

(d) He shall surrender his passport, if any, to the Station House Officer of Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar;

(e) The appellant shall not contact the prosecutrix or her parents or relatives or any witnesses or any such person through whom he would make an attempt to influence the prosecutrix or the witnesses, directly or indirectly by any mode;

(f) The appellant would tender his address of residence along with his Cell number and Land-line number, if any, at which place he would reside during the operation of this order, to the Station House Officer of Police Station, Shrigonda;

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- (g) Bail be furnished before the Trial Court;
- (h) We direct the Deputy Director, Forensic Science Laboratory, Santacruz, Kalina, Mumbai to ensure that the entire analysis reports and the articles received by it for analysis would be forwarded to the learned Additional Sessions Judge at Shrigonda, in Special Case No.150/2019, on or before 20/11/2021. No request for extension of time would be entertained;
- (i) Consequently, we request the Trial Court to decide Special Case No.150/2019, as expeditiously as possible and preferably on or before 30/04/2022;
- (j) In the meanwhile, until the reports from the Forensic Science Laboratory are received, the prosecution shall examine those witnesses, who are unconnected with the articles and the Forensic Science Laboratory reports.

(S. G. MEHARE, J.)**(RAVINDRA V. GHUGE, J.)**

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