

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

922 CRIMINAL APPEAL NO. 227 OF 2021

Hanumant Asaram Hadule
@ Mahant Hanuman Giri Guru
Mahant Shivgiri
Age-28 years, Occu-Priest,
R/o. Kolegaon, Tq. Georai,
Dist. Beed

...APPELLANT

VERSUS

1. The State of Maharashtra,
Through PI Chak,amba Police Station,
Tq. Georai, Dist. Beed
2. XYZ
C/o. Babasaheb Shivram Kamble,
Age-40 years, Occu-Agri,
R/o. Kolgaon, Tq. Georai, Dist. Beed

...RESPONDENTS

Mr. R. G. Hange, Advocate & Mr. A. R. Hange, Advocate for the
appellant
Mr. Arvind Ambetkar, Advocate for the respondent No.2
Mr. R. B. Bagul, APP for the respondent/State

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 11-08-2021

PRONOUNCED ON : 21-08-2021

P. C.

. Being aggrieved and dissatisfied with the order passed
by the Additional District Judge, Beed in Criminal Bail Application

No.255 of 2021, the present appellant has preferred this appeal.

2. Facts give rise to the present appeal can be summarized as under:

a] The appellant is claiming himself to be a Mahant @ Priest of Hanuman Giri Guru Mahant Shivgiri. He resides at Kolegaon, Tq. Georai, Dist. Beed (Mh). It is alleged against the appellant that he outraged the modesty of victim /informant on 30-01-2021 and 31-01-2021. The informant lodged the FIR on 04-02-2021 that on 30-01-2021 the appellant came to her house. His father had been to the field and his brother was in another room. The appellant made enquiry with her about her education and then pulled her and moved his hand on chest and back of the informant. She felt that the appellant had ill-intention. It is also alleged that the appellant held hand of informant but she got herself rescued from the clutches of the appellant. Meantime, father of the informant came to the house. The appellant made enquiry with him and then went away. It is further alleged that on 31-01-2021 at about 05.30 pm. the appellant again entered into the house of the informant and came near the informant and brought his face to near her face. Informant raised shout. The appellant threatened her not to disclose the incident to anybody and went away. The informant did not disclose both the incidents to anybody including his father and brother. Her mother had been to parental house.

b] On 02-02-2021 the father of the informant lodged the NC against the appellant alleging that he frequently visits his house in his absence. On arrival of mother, the informant disclosed the incidents to her. Thereafter, the father of the victim/informant conveyed meeting of villagers wherein the appellant was asked to explain the allegations made against him. One of the villagers had taken video film of the said meeting and conversation was reduced into writing and produced before the police. On 04-02-2021, the informant lodged the report against the appellant. It is contended that informant is member of Scheduled Caste. Hence, charges under Sections 504(A) and (D) of the Indian Penal Code, Sections 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and Section 8 and 12 of the Protection of Children From Sexual Offences, Act 2012 are leveled against the appellant.

c. The appellant preferred the anticipatory bail application before the Sessions Court. But, it was rejected. Hence, the present appeal came to be filed.

3. It is the case of the appellant that Raskar who is Advocate and Sarpanch was trying to register the trust of Suryamandir and proposed that if the trust is formed then he (Sarpanch) should be made president and his nephew would act as a Secretary of the trust. The appellant denied the said proposal. Therefore, the Sarpanch was annoyed with the appellant. It is

contended that with the help of father of the informant, Sarpanch has instigated the father of the informant and therefore, false case is lodged against him.

4. It is contended that the incidents alleged in the FIR have not taken place at all. It is contended that the appellant has respect in the village. In order to dislodge the appellant from the Suryamandir, Sarpanch and father of the informant have concocted the incident. It is contended that the informant is a minor girl. She was tutored by her parents and Sarpanch of the village. Hence, false complaint was filed. It is contended that the appellant was not aware of the caste of the informant. The informant was never humiliated by the appellant. There is delay in lodging the FIR. Trial court has not considered the above facts in proper perspective and rejected the application of the appellant.

5. Heard learned counsel for the appellant, learned APP for the respondent/State and learned counsel for the respondent No.2/informant.

6. Perused the FIR. It appears that at the time of incident informant was aged about 15 years. In support of the same, the prosecution has relied on the birth certificate of the informant. Date of birth of informant is shown as 16-12-2006. So, it can be said that at the time of incident, the informant was minor. The age of the informant is not denied by the appellant. It is specifically

alleged by the informant that on 30-01-2021 the appellant came to her house and pulled her, moved his hand on her chest and back with ill-intention. It is alleged that on the next date i.e. 31-01-2021 the appellant again came and pulled informant near to him and try to kiss her. Said incidents are specifically described by the informant. No doubt, said incidents are denied by the appellant on the ground that there is delay in lodging the FIR. The informant has explained that, she did not disclose the incidents to her father and brother and she was waiting her mother to arrive in the house. According to the informant, the mother had been to her paternal house. The father of informant did not like the visits of the appellant to his house in his absence. Therefore, he had lodged the NC on 02-02-2021, wherein, there is no reference of incident of outraging modesty of the informant by the appellant. On the basis of said NC, the learned counsel for the appellant submits that FIR is lodged belatedly after-thought after consultation with the villagers. Therefore, reliance should not be placed on the FIR. But, on the other hand, learned APP submits that father of the informant had no knowledge about the incident alleged by the informant. But, father of the informant had knowledge that appellant had visited his house twice in his absence. Therefore, he was annoyed and he lodged the NC. Said explanation appears to be proper because, the informant has categorically stated that she did not disclose incident to her father. She disclosed the incident first time to her mother and thereafter, her father came to know about the same. It is also pertinent to note here that after knowing the incident, the father of

informant had called meeting of villagers, wherein, the appellant was called. His explanation was sought. Film of the said meeting was taken. The conversation of the said meeting is obtained by the Investigating Officer and given it to this court for perusal. So, it can be said that the appellant was given opportunity to explain the incident. But, he denied the same. Therefore, FIR came to be lodged on 04-02-2021. So, prima-facie, prosecution has explained the delay in lodging the FIR. No doubt, said aspect of delay can be considered during the trial. What is important to consider is that the informant is a minor girl aged about 15 years, who felt that appellant touched her with ill-intention. Therefore, she was disturbed and ultimately she disclosed the incident to her mother.

7. On going through the FIR and the statements of witnesses, it appears that prima-facie offences under Section 354(A) and (D) are made out. As far as the offences under Section 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act are concerned, there are specific allegations against the appellant that he touched the body of informant with ill-intention. So, prima-facie offences under Sections 3(1)(w)(i) and 3 (1)(w)(ii) are made out against the appellant. Said Sections 3(1)(w)(i) and 3 (1)(w)(ii) of Atrocities Act run as under:

Section 3 (1)(w)(i):

Intentionally touches a woman belonging to a

Scheduled Caste or Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

Section 3 (1)(w)(ii):

Uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

8. Therefore, on this count also, the appellant is not entitled for pre-arrest bail. Once it is held that the offences under Sections 354(A) and (D) and under Section 3(1)(w)(i) and 3 (1)(w) (ii) are made out against the appellant, therefore, grant of pre-arrest bail does not arise. Therefore, I pass the following order.

ORDER

- i. Criminal Appeal is dismissed.

[SURENDRA P. TAVADE, J.]