

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

CRIMINAL APPEAL NO.298 OF 2021

- 1] Rameshwar s/o Balasaheb Survase
Age : 24 years, Occu.Agril.,
- 2] Bhaiyya @ Laxamn s/o Sudhakar Survase
Age : 22 years, Occu.Agril.,

Both R/o : Khalwat Limgaon
Tq. Wadwani, Dist.Beed.

.. APPELLANTS
[Accused]

VERSUS

- 1] The State of Maharashtra
Through Police Inspector
Police Station, Wadwani
Tq. Wadwani, Dist.Beed
- 2] Balasaheb s/o Rambhau Mali
Age : 50 years, Occu.Labour,
R/o : Khalwat Limgaon
Tq. Wadwani, Dist. Beed.

.. RESPONDENTS
[Resp. No.2 Orig.Informant]

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Shri R.S.Shinde (Borolkar), Advocate for the appellants
Smt.G.L.Deshpande, A.P.P. for respondent no.1 State.
Smt.Shital Waghmare, Advocate (appointed) for respondent no.2.

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CORAM :MANGESH S. PATIL J.
DATE : 05.08.2021.

ORAL JUDGMENT :-

Heard.

- 2] **Admit.** With consent of both sides, the Appeal is heard finally at admission stage.

3] This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being aggrieved and dissatisfied by the rejection of their application for regular bail under Section 439 of the Cr.P.C. in connection with Crime No.93/2021 registered with Wadwani Police Station, Dist. Beed for the offences punishable under Sections 354-A, 354-D, 506 read with Section 34 of the I.P.C., Sections 8 and 12 Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as POCSO Act for short) and Sections 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4] I have heard learned advocate for the appellants, learned A.P.P for respondent State and the learned advocate for respondent no.2 who is the original informant.

5] It is being alleged in the F.I.R. that on 14/5/2021, the appellants molested minor daughter of the respondent no.2 while he himself had gone for grazing cattle. It is then alleged that even on the next day morning both the appellants threatened her of dire consequences. It is alleged that couple of neighbours had witnessed the incident of the second day and the matter was reported to police and offence was registered. The appellants have been arrested on 16/5/2021.

6] Accepting the allegations at their face value, there is no eye witness to the incident of the earlier day i.e. 14/5/2021. For the reasons best known to the Investigating Officer, the papers of the investigation nowhere disclose as to if he has made any attempt to get statement of the victim recorded under Section 164 of the Cr.P.C. which is mandated by the provisions of the POCSO Act. Resultantly as of now, there is no direct material as regards the incident dated 14/5/2021.

7] So far as the incident dated 15/5/2021 is concerned, there are couple of witnesses viz. one Afsar Sayyed and his wife who have specifically stated about the appellants having threatened the victim. Conspicuously except giving threats there are no allegations about the appellants having indulged in any other offences on the second day.

8] The Investigating Officer has had sufficient opportunity to complete the investigation by now. He is conspicuously silent as to what has remained to be investigated.

9] Considering all the aforementioned facts and circumstances, in my view, though there were sufficient grounds for the learned Special Judge to refuse to grant bail since the impugned order was passed barely within 15 days of the registration of the crime, by passage of time, the purpose of keeping the appellants behind the bar in all probability is over.

10] The Appeal is allowed. The impugned order is quashed and set aside.

11] The appellants shall be released on bail in connection with Crime No.93/2021 registered with Wadwani Police Station, Dist. Beed for the offences punishable under Sections 354-A, 354-D, 506 read with Section 34 of the I.P.C., Sections 8 and 12 of the POCSO Act and Sections 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on their executing personal recognizance for an amount of Rs.20,000/- (Rs.Twenty thousand only) each and on furnishing a solvent surety in the like amount each subject to following conditions :

- a] They shall not enter village Khalwat Limgaon, Tq. Wadwani, Dist.Beed till filing of the charge sheet.
- b] They shall not tamper the evidence or influence the witnesses.

12) Bail before the trial Court.

13] Smt.Shital Waghmare, Advocate is appointed to represent the respondent no.2. Her fees is quantified at Rs.2000/-.

(MANGESH S. PATIL, J.)

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