

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

CRIMINAL APPEAL NO.435 OF 2021

Ambalal Subash Patil (Petel)
Age : 54 years, Occ : Agriculture,
R/o Brahmanpuri, Taluka : Shahada,
District : Nandurbar.

..APPELLANT

VERSUS

1. The State of Maharashtra
through Shahada Police Station
2. Kisan Harsha Pawara
Age : 38 years, Occ : labourer,
Resident of Sablapani,
Taluka Shahada, District Nandurbar.

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Mr.R.N. Dhorde, senior counsel i/b Mr.J.R. Shah,
advocate for the appellant.

Mr.R.D. Sanap, APP for the respondent/State.

Mr.Sohail Subhedar, advocate for respondent no.2.

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CORAM : V.K. JADHAV

AND

SHRIKANT D. KULKARNI, JJ.

DATE : 08TH OCTOBER, 2021

ORAL JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Feeling aggrieved and dissatisfied by the impugned common order of rejection of bail in Regular Bail Application Nos.144 of 2021 and 145 of 2021, dated 23rd August, 2021 passed by the Additional Sessions Judge, Shahada, Dist. Nanded, the appellant/accused no.4 has preferred this appeal by taking aid of Section 14-A(2) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989").

2. The appellant/original accused no.4 is seeking bail in connection with Crime No.619/2021 registered with Shahada Police Station under sections 376, 376AB, 313, 315, 316, 317, 318, 201 and 506 read with section 34 of the Indian Penal Code (IPC) and under section 5(1)(m) read with section 6 of the Protection of Children from Sexual Offences Act, 2012 and also under sections 3(1)(w)(i)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by taking aid of section 439 of the Code of Criminal procedure, after filing of the charge-sheet.

3. The Additional Sessions Judge, Shahada was pleased to reject the bail application of the appellant/original accused no.4 by common order dated 23rd August, 2021.

4. One Kisan Aarshya Pawara (hereinafter referred to as "the first informant") belongs to Scheduled Tribe caste lodged FIR on 13.06.2021 with Shahada Police Station. It is alleged in the FIR that about 15 days prior to lodging of the complaint, at about 8 p.m. the first informant and his wife appeared to have noticed their

daughter's advanced days pregnancy. They made inquiries with her by taking her into confidence. Their daughter disclosed that prior to five months at about 8 p.m, when she was returning to home, on the way, accused Pankaj came to her and forcibly took her to nearby bushes by pressing her mouth, undress her and committed sexual intercourse with her. He threatened to the victim with dire consequences if she disclosed the incident to her family members. Even thereafter, accused – Pankaj sexually exploited the daughter of the first informant. Due to which, the daughter of the first informant became pregnant.

5. The first informant rushed to the house of accused – Pankaj about his heinous act, whereupon he ran away. In the same night, accused no.4 / Ambalal Subash Patil (present appellant) came to the first informant and not only convinced him to cause the miscarriage of the victim so as to avoid defamation of his family, but also advised the first informant to make abortion of his daughter and gave Rs.30,000/- to him. At the instance of the appellant, the first informant took the victim to Civil Hospital, Nandurbar and thereafter private hospital at Surat for causing miscarriage of victim, however, the doctor refused to conduct abortion.

6. It is further the case of the prosecution that the appellant went to the house of the first informant on 09.06.2021 and informed that he has arranged one doctor for causing miscarriage and asked him to accompany the doctor. The arrangement of four wheeler was made. The vehicle was owned by accused Shantya Patil and accused Bhurya was the driver of the said vehicle. The first informant along with his wife and their daughter (victim) were taken to one hut situated in a field in Malpha Shivar, Tq. Pansemal, Dist. Barwani (Madhya Pradesh). Accused Shantya Patil and one doctor from Shahada also came there. Doctor examined the victim and gave her medicines for causing miscarriage. On next day i.e. on 10.06.2021, the victim aborted the child and foetus was cremated/buried nearby and they came to their home at Brahmanpuri. According to the prosecution, appellant – Ambalal again gave Rs.20,000/- to the first informant for the treatment of his daughter/victim and threatened that he should not disclose to anybody otherwise they would be killed. One woman nurse had also participated in causing miscarriage of the victim.

7. On the basis of the FIR lodged by the first informant, Crime No.619/2021 came to be registered for the above said offences and the present appellant came to be arrested and

initially remanded to police custody and now he is in judicial custody.

8. The appellant had applied for bail, but the learned Sessions Judge was pleased to reject that application vide order dated 01.07.2021. The appellant preferred Criminal Appeal No.330/2021 before this Court against the rejection of bail order passed by the Additional Sessions Judge, Shahada. The appellant was released on ad-interim bail during pendency of the bail application. Interim bail granted earlier to the appellant continued during pendency of the said Criminal Appeal. Criminal Appeal No.330/2021 preferred by this appellant/original accused no.4 came to be withdrawn by the appellant by obtaining leave from this Court. This Court was pleased to grant leave vide order dated 11th August, 2021. After completion of investigation and after filing of charge-sheet, the appellant/accused no.4 attempted to secure the bail from the Additional Sessions Judge, Shahada, but could not get bail order. He has again knocked the doors of this Court for regular bail after filing of the charge-sheet by way of present Appeal.

9. Heard Mr.R.N. Dhorde, senior counsel i/b Mr.J.R. Shah, learned counsel for the appellant, Mr.R.D. Sanap, learned APP for respondent/State and Mr.Sohail Subhedar, advocate for respondent

no.2-first informant.

10. Mr.Dhorde, learned counsel vehemently submitted that the investigation of the above-said crime is over and police have filed charge-sheet. There is no need to keep the appellant/accused no.4 behind the bars when the investigation is completed. The role allegedly played by the appellant is very limited to the extent of financial aid. He submitted that if allegations levelled in the FIR and material collected during the course of investigation is considered, the appellant alleged to have extended the financial help to the first informant for causing abortion of his daughter. He has not played active role in commission of alleged offences. He is not the main accused. The trial would take its own time. There are no extraordinary circumstances to keep the appellant behind the bars when the charge-sheet is filed. Mr.Dhorde, learned senior counsel urged to grant bail.

11. Per contra, Mr.R.D. Sanap, learned APP for the State and Mr.Sohail Subhedar, learned counsel for respondent no.2 strongly opposed to grant bail to the appellant/accused no.4. They submitted that the appellant/accused no.4 has played prominent role in commission of alleged offences. He has not only extended the financial

aid but used influence on the first informant and his family members including victim for causing abortion. He has even made arrangement of vehicle as well as the doctor. The appellant is an influential person from the village. If he is released on bail, there is every possibility of tampering of witnesses. They submitted that a minor girl has been sexually exploited and raped by the accused, who are from upper caste. The appellant/accused has committed serious offences and extended help to the main accused. He is equally involved in the commission of alleged offences. It is not a fit case to grant bail to the appellant – accused no.4.

12. We have perused the FIR and the material annexed with the charge-sheet very carefully. On going through the FIR and other papers collected during the course of investigation, it appears that a minor girl aged 11 years was subjected to sexual assault and rape at the hands of main accused – Pankaj Mangya Patil. The first informant is from Scheduled Tribe. The appellant along with co-accused seem to have taken undue advantage of poverty of the first informant. They seem to have used influence on the first informant and victim to cause miscarriage. The narration given in the FIR clearly spells out as to how the victim girl was sexually assaulted by putting her in fear. The

appellant along with co-accused seem to have attempted to come out of clutches of criminal case and offered money to the first informant. The appellant along with co-accused seem to have taken the first informant and his daughter to one isolated area in the State of Madhya Pradesh, where they arranged for miscarriage. They have succeeded in getting abortion of the victim in a very shocking and barbaric manner. Fortunately the victim girl survived despite of such horrific miscarriage.

13. It is a case of rape on minor girl coupled with the offences under the Protection of Children from Sexual Offences Act, 2012 and the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the position of the appellant in the society needs to be taken into consideration. He seems to be influential person in the village. He is a person who alleged to have played major role in causing miscarriage of victim by arranging vehicle, doctors and Nurse. His role is not only restricted in giving financial aid, as appears *prima facie* from the material collected during investigation.

14. What are the factors to be kept in mind while considering the bail application relating to heinous offences have been indicated by the

Hon'ble Apex Court in the case of ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee & another***, reported in ***(2010) 14 SCC 496***, wherein by relying on its earlier decisions in the case of ***State of U.P. Vs. Amarmani Tripathi***, reported in ***(2005) 8 SCC 21*** and in the case of ***Ram Govind Upadhyay Vs. Sudarshan Singh*** reported in ***(2002) 3 SCC 598***, the Hon'ble Apex Court has indicated the following factors to be borne in mind while considering the bail application :-

- i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the accusation;
- iii) Severity of the punishment in the event of conviction;
- iv) danger of the accused absconding or fleeing, if released on bail;
- v) character, behaviour, means, position and standing of the accused;
- vi) likelihood of the offence being repeated;
- vii) reasonable apprehension of the witnesses being influenced; and
- viii) danger, of course, of justice being thwarted by grant of bail.

15. On careful scrutiny of the charge-sheet and the papers annexed thereto and having regard

to the parameters for consideration of bail laid down by the Hon'ble Supreme Court in the case of ***Prasanta Kumar Sarkar, Amarmani Tripathi, Ram Govind Upadhyay (supra)***, we arrive at a conclusion that it is not fit case to grant bail to the appellant – accused no.4 having regard to his active role in the commission of alleged offences. He is an influential person from the village. If he is released, there is every possibility of tampering with the prosecution witnesses and even danger to the family members of the first informant. It is a case of rape on a minor girl of 11 years and forcible abortion in a barbaric manner. The provisions of Protection of Children from Sexual Offences Act, 2012 are also invoked coupled with provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

16. Having regard to the serious nature of accusations levelled against the appellant, punishment provided under the respective offences, no case for bail is made out by the appellant/accused no.4. The appellant/accused no.4 is resident of same locality where the victim resides, and there is reasonable apprehension put-forth by the prosecution side of the witnesses being influenced.

17. Having regard to the above reasons and

discussion, we are not convinced to grant bail to the appellant/accused no.4. Needless to say that appeal needs to be dismissed. Hence, the following order :-

ORDER

- (i) The Criminal Appeal stands dismissed.
- (ii) The observations made by this Court are *prima facie* for deciding the Appeal seeking bail. The trial Court shall not get influenced by the observations made by this Court.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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