

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

CRIMINAL APPEAL NO.687 OF 2020

**SHAKIL SAYYAD SADIK SHAYYED
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Appellant : Shri M. L. Wankhede
APP for Respondent No.1 – State : Shri S. G. Sangle
Advocate for Respondent No.2 : Smt. Ashlesha Kulkarni (Appointed)

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**WITH
CRIMINAL APPEAL NO.648 OF 2020**

**ASHOK S/O SURYABHAN VIDHATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Appellant : Shri R. R. Karpe
APP for Respondent No.1 – State : Shri S. G. Sangle
Advocate for Respondent No.2 : Smt. Ashlesha Kulkarni (Appointed)

...

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

DATE : 04th JANUARY, 2021

PER COURT :

1. By these two appeals, both the accused pray for anticipatory bail in the light of the crime registered against them vide FIR No.730/2020 dated 03-11-2020.

2. Vide order dated 18-12-2020 we had considered the request of accused No.1, who is the main accused, for ad-interim relief, which reads as under :-

"8. In view of the above, in the event of arrest of the appellant (Ashok Suryabhan Vidhate), by way of an ad-interim relief, he shall be released on bail till 04.01.2021 on the following conditions :-

(a) The appellant shall tender a PR Bond and Cash Surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and a surety of the like amount.

(b) The appellant would mark his attendance with the Cidco Police Station, Aurangabad on 21.12.2020 on 26.12.2020, 30.12.2020 and 02.01.2021.

(c) The Station House Officer shall mark the presence of the appellant in the station diary and obtain his signature to evidence the same.

(d) The appellant shall submit self attested copies of his Adhar Card and the Voters Identity Card issued by the Election Commission of India.

9. Stand over to 04.01.2021"

3. We have heard the learned advocates for both the accused and the learned advocate on behalf of respondent No.2 informant and the learned APP on behalf of the State.

4. We find from the FIR that the informant had separated from her husband at the age of about 24 years and specifically ten years prior to the registering of the FIR. It is her contention that accused No.1 – Ashok Suryabhan Vidhate used to frequently come to the shopping complex where the informant had her own shop. Both were in the business of selling clothes. On 25-04-2016, accused No.1 telephoned the victim and asked her to meet him at a house which was vacant and was in the possession of the accused. It is alleged that he promised her company for the rest of her life and it is further alleged that he

forcibly committed an act punishable under Section 376 of the IPC. Thereafter, he used to regularly take her to the same premises and till 25-10-2020, which is a period of about four years and six months, he repeatedly committed the said offence.

5. It is further stated in the FIR that on 25-10-2020, at about 10.30 a.m., he again called her to the same premises, again indulged in a sexual act and thereafter, while chitchatting with each other, he asked for Rs.5 Lakhs since he was in need of money. When the victim refused to extend him any financial assistance on the ground that she does not have money, he is alleged to have threatened her that he would upload various video clippings of their sexual acts on the social networking site. At 07.30 p.m. on the same day, accused No.2 – Shakil Sayyad Sadik Shayyed, who is said to be a close friend of accused No.1, also threatened her that even if accused No.1 deletes the video recordings, he has been forwarded the said video clips and he would upload them on social networking sites. The victim contends in the FIR that she was not aware as to when and how has accused No.1 recorded the sexual acts.

6. The learned advocate appearing on behalf of the

victim, appointed through Legal Aid, has vehemently contended that the victim belongs to a Scheduled Caste and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is squarely applicable and, therefore, Section 18 of the said Act creates a bar on grant of anticipatory bail. She further submits that accused No.1 has indulged in blackmailing tactics. There is every chance of both the accused destroying evidence. There is also a chance that they may have downloaded the said clips on some other electronic gadgets and preserved it elsewhere and hence, their custodial interrogation is necessary. She also expressed her apprehension that the said clips may have been shared with some other friends of the accused.

7. The learned APP has pointed out, on the basis of a communication from the Station House Officer, that accused No.1 has not extended any cooperation in the investigation. As this Court was gracious in granting ad-interim protection to the first accused, since his son was to get married on 24-12-2020, the said accused was expected to render assistance and cooperation. Since, he has refused to do so, custodial interrogation is necessary.

8. Having considered the material available before us

at this prima facie stage and since we do not intend to make any such observation that is likely to impinge the investigation and the trial, we are of the view that as the victim has kept silent for a period of four years and six months, stringent conditions can be imposed on both the accused while granting anticipatory bail. They can be put to terms to ensure proper cooperation and if the investigating officer appears before us hereinafter, with the plea that they are not extending any cooperation, the said ground can be considered for cancellation of the anticipatory bail.

9. In view of the above, we allow these appeals and in the event of arrest of both the appellants namely Ashok Suryabhan Vidhate and Shakil Sayyad Sadik Shayyed, shall be released on bail on the following conditions :-

- a) Both shall tender a PR Bond in the sum of Rs.1 Lakh (Rupees One Lakh Only) each and the solvent surety of the like amount.
- b) Both shall appear before the Station House Officer, Cidco Police Station, tomorrow i.e. on 05-01-2021 at 01.00 p.m. and surrender their mobile instruments for investigation.
- c) They shall mark their attendance with the CIDCO

Police Station on every Tuesday, Thursday and Saturday, between 01.00 p.m. to 03.00 p.m. until the commencement of the trial.

- d) They shall make themselves available, besides appearing on the above mentioned days, on all such days on which they are called upon for investigation.
- e) Both shall not attempt to contact the victim, either directly or indirectly, shall not tamper with the evidence and shall not attempt to contact any such person who could be a witness in this case.

10. Violation of the any of the above conditions would be a good ground for cancellation of bail.

11. Since the learned advocate Smt. Kulkarni was appointed to represent respondent No.2, through Legal Aid, we quantify her fees at Rs.5,000/- (Rupees Five Thousand Only).

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)