

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 545 OF 2021

ABC

...APPELLANT

Versus

1. The State of Maharashtra
Through Bazarpeth Police Station,
F.I.R. No. I-64/2019

2. XYZ

...RESPONDENTS

...

Mr. Raju. D. Suryawanshi for appellant.

Ms. Ameeta Kuttikrishnan appointed for Respondent No. 2.

Ms. M.H. Mhatre, APP for State.

...

CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.

RESERVED ON : 5th AUGUST, 2021.
PRONOUNCED ON: 24th AUGUST, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

1. At the outset it is required to be noted that since the allegations leveled by the 2nd respondent against the appellant are in respect of the alleged sexual assault, the identity of the appellant and 2nd respondent needs to be concealed, therefore, the appellant is referred to as “ABC” and 2nd respondent is referred to as “XYZ”. The Registry is directed to maintain the record accordingly.

2. Being aggrieved by an order dated 20.09.2019 passed by the learned District Judge-1 and Additional Sessions Judge, Kalyan in Bail Application below Exhibit-3 in Sessions Case No. 206 of 2019, the present appeal is filed. By the impugned order, the prayer of the appellant to release the appellant on bail has been turned down.

3. On 25.03.2019, the 2nd respondent lodged C.R. No. 64/2019 against the appellant for the offences punishable under Sections 376, 385 of Indian Penal Code (for short “IPC”) and Section 3(2)(V), 3(1)(W)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “said Act”) and Section 67(A) of the Information of Technology Act, 2000. Pursuant to registration of said FIR on 29.03.2019, the appellant was arrested. After investigation, on 24.05.2019 the police filed chargesheet against the appellant. After filing of the chargesheet, on 17.06.2019, the appellant preferred bail application, however by the impugned order the said application was rejected.

4. Learned counsel appearing for the appellant submits that there was consensual relationship between the appellant and 2nd respondent. The said consensual relationship was for a considerable period from 2013 till lodging of the FIR, therefore, alleged offence under Section 376 of IPC is not made out. The appellant never abused the 2nd respondent on her cast,

therefore, there is no question of applying provisions of the said Act. The appellant was ready to marry the 2nd respondent, however, the 2nd respondent refused to marry the appellant. The 2nd respondent was consenting party to the alleged incident of rape, and therefore, no offence is made out under Section 376 of IPC. The investigation has already been completed and, therefore, there is no need to detain the appellant in jail. Respondent No. 2 used to extract money from the appellant. The Trial Court did not consider the statement of Ms. Prajakata Bharat, wherein she has categorically stated that the appellant and the 2nd respondent were happy when they met the said witness. The 2nd respondent is an educated lady and working as police constable and, therefore, she cannot allege that she does not know the effect of being party to the consensual relationship. The appellant is in jail for a considerable period and there are no chances of commencing the trial in near future. Learned counsel invites our attention to the grounds taken in the appeal memo, annexures thereto and submits that there is no substance in the prosecution case and, therefore, the appellant deserves to be released on bail, during the pendency of trial.

5. On the other hand, the learned APP appearing for Respondent-State and Ms. Ameeta Kuttikrishnan, the learned counsel appointed to represent the 2nd respondent, jointly submit that the allegations in the FIR

coupled with the statement of witnesses and incriminating material collected during the course of investigation would make it abundantly clear that the appellant has committed sexual assault without consent of the 2nd respondent under the threat and coercion that in case she refuses to continue the alleged relationship with the appellant, he will expose the 2nd respondent by uploading her obscene photographs taken by him on facebook and whatsapp. It is submitted that the appellant not only deserves to be prosecuted for the offence under Section 376 of the IPC but also under the provision of said Act and also under Section 67 of Information Technology Act, 2000. The appellant threatened the 2nd respondent that he will upload the photographs of the 2nd respondent on facebook and whatsapp and spoil her life, if she takes any action against the appellant for his forceful sexual assault, which according to the 2nd respondent was without her consent.

6. We have given due consideration to the rival submissions. With the able assistance of learned counsel for the appellant, the learned APP for State and learned counsel appointed to represent the 2nd respondent, we have carefully perused the allegations in the FIR, charge sheet and its accompaniments and also other incriminating material collected during the course of investigation. Upon careful perusal of the allegations in the FIR, it is alleged that the appellant had committed forceful sexual assault against the

will of 2nd respondent. During meeting of appellant and 2nd respondent, the appellant snapped obscene photographs of the 2nd respondent and prepared a video and also created fabricated facebook account in the name of 2nd respondent and uploaded the said photographs and video on the said facebook account to malign the image of 2nd respondent and prevent her from taking action against the appellant for his forceful sexual assault.

7. The precise allegations are that the appellant asked the 2nd respondent to keep the relations with him by giving promise to her that he will marry with her, however, when the 2nd respondent asked the appellant to perform the marriage, he refused to marry the 2nd respondent, on the ground that she belongs to scheduled tribes. One specific incident has been quoted in the FIR that in the month of January 2019, the appellant established contact with the 2nd respondent and promised her that he will marry with her and she should continue love affair with him, and she was called at the place of appellant's friend at Kalyan. Believing the appellant, the 2nd respondent went to Kalyan at the place of appellant's friend at the address given in the FIR. The appellant by taking undue advantage of her presence at his friend's place on 23.01.2019 in between 12.00 to 15.30 p.m. committed sexual assault and also snapped obscene photographs and created video of 2nd respondent.

8. The appellant has committed alleged offences which would not

only attract the provisions of IPC, but also attracts the provisions of said Act and also provisions of Section 67(A) of the Information and Technology Act, 2000. The contention of learned counsel for the appellant that the 2nd respondent was consensual party to the alleged relationship with the appellant, and, therefore, the appellant has not committed any offence, cannot be accepted for a simple reason that *prima facie* it appears that the appellant had intention to cheat the 2nd respondent since inception. A specific allegations in the FIR that the appellant refused to marry with 2nd respondent since she is from scheduled tribes, cannot be taken lightly. In addition to above, the conduct of the appellant to snap the obscene photographs of 2nd respondent and to give threat to her that, if she refused to continue love affair with him in that case he will expose her by uploading those photographs on facebook and whatsapp. The matter does not stop there, but as a matter of fact the appellant on 21.03.2019, as alleged in the FIR, uploaded the said photographs by creating forged and fabricated facebook account in the name of 2nd respondent.

9. In our *prima facie* opinion, the impact of alleged activities of the appellant is not restricted to the facts of the present case, if such activities are allowed to continue, same has great impact upon the society. In that view of the matter, for more than one reason assigned in foregoing paragraphs, we are

of the opinion that the appellant does not deserve to be released on bail, keeping in view the material collected by the investigating officer during the course of investigation. In addition to above, in case the appellant is released on bail, there is every possibility that he may tamper with prosecution witness and evidence. It is not necessary to elaborate the reasons. Suffice it to say that no case is made out to grant relief.

10. In the light of discussion in foregoing paragraphs, we are not inclined to entertain the present appeal to release the appellant on bail. Hence, the appeal stands dismissed.

11. The observations made herein above are *prima facie* in nature and confined to the adjudication of present appeal only.

12. We direct the concerned trial Court to expedite the pending trial and complete the same as expeditiously as possible, however within six months from today. In case, the trial is not completed within six months from today, the appellant will be at liberty to apply for bail.

13. We appreciate the able assistance rendered by Advocate Ms. Ameeta Kuttikrishnan, appointed for representing the 2nd respondent. We quantify her fess at Rs. 10,000/- to be paid by High Court Legal Services Committee, Mumbai, within four weeks from the receipt of copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)