

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.107 OF 2021

Rashmi Chetan Bhandari & Anr.	...Appellants
V/s.	
The State of Maharashtra & Anr.	...Respondents

Mr. Rahul Arote, Advocate for Appellants.
Mr. A. R. Patil, APP for Respondent No.1 (State).
Mr. Amol Joshi a/w Mr. Mohd. Akhtar for Respondent No.2.
Mr. V. S. Kedar, PSI, Khadakpada Police Station, Thane present.

CORAM : A. S. GADKARI, J.
DATE : 7th APRIL, 2021.

P.C. :

1. By an Order dated 9th February 2021, the Appellants were granted interim relief.
2. This is an Appeal under Section 14-A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, '*the S.C.S.T. Act*'), for pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973, in C.R. No.6 of 2021 registered with Khadakpada Police Station, District Thane, under Section 354A(1)(i) read with 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(2) of the S.C.S.T. Act.

3. Heard Mr. Arote, learned Advocate for the Appellants, Mr. Patil, learned APP for the Respondent No.1 – State and Mr. Amol Joshi, learned counsel for Respondent No.2. Perused record of investigation.

4. The F.I.R. is lodged by the Respondent No.2. The Respondent No.2 in her first information report has admitted that, she is residing in live-in-relationship with the husband of the Appellant No.1 namely, Mr. Chetan B. Bhandari. That, out of the said relationship, she has given birth to a male child, Master Tirth and a female child, Ms. Rusha. It is alleged in the report that, the Respondent No.2 and the Appellant No.1 were studying in the same school and therefore the Appellant No.1 was aware of the caste of the Respondent No.1 i.e. Mahadev Koli, a Schedule Tribe. That, the Appellant No.1 had left her husband and thereafter, the Respondent No.2 developed intimacy with the husband of the Appellant No.1. They are staying together in live-in-relationship for about two years. It is alleged that, as the Respondent No.1 has been residing with Mr. Chetan B. Bhandari i.e. husband of the Appellant No.1, the Appellant No.1 got infuriated and therefore, from February 2020 till 4th December 2020 at least on four occasions, accosted Respondent No.2 and abused her on her caste. That, the Appellant No.2 being a friend of Appellant No.1, assisted her in commission of the said crime. In this brief premise the present crime is registered.

5. Perusal of record indicates that, on 24th August 2020, the Appellant No.1 had lodged a complaint in writing with the Deputy Commissioner of Police, Kalyan Division, Kalyan. Copies of the same were sent to the Assistant Commissioner of Police, Kalyan and Inspector of Police, Khadakpada Police Station, Kalyan. It is alleged in the said complaint that, though the marriage between the Appellant No.1 and Mr. Chetan B. Bhandari is in subsistence, her husband Mr. Chetan B. Bhandari, started residing with the Respondent No.2 herein and due to the said relationship, the Respondent No.2 was pregnant of seven months. She therefore, had requested the concern authorities to lodge a crime against Mr. Chetan B. Bhandari and Respondent No.2 under Section 494 and 420 of the Indian Penal Code. The record further indicates that, the Police instead of lodging F.I.R. on the basis of complaint lodged by the Appellant No.1, conveniently registered a non-cognizable offence under Section 494 of the Indian Penal Code and did not take cognizance of offence under Section 420 alleged against Mr. Chetan B. Bhandari. It further appears that, in response to the Application filed by the Appellant No.1 under the provisions of Right to Information Act, 2005, the Government Information Officer and Assistant Commissioner of Police, Kalyan Division, Kalyan by its communication dated 5th November 2020 informed the Appellant No.1 that, her application is registered at serial No.503 of 2020 on 2nd

September 2020. To the said communication dated 5th November 2020, a report dated 28th October 2020 signed by a Women Assistant Police Sub-Inspector, Khadakpada Police Station, Kalyan (West) is annexed. In the said report, the concerned Police Officer has mentioned that, on the basis of the Application submitted by the Appellant No.1, non-cognizable offence bearing No.1343 of 2020 under Section 494 of the Indian Penal Code, has been registered. That, the Appellant No.1 was satisfied with the same and had expressed her 'no objection' for closing the said proceedings and therefore, her Application was filed in the record of the Police Station.

6. It further appears from record that, in this background as noted hereinabove, the present crime has been registered by the Respondent No.2, on 5th January 2021.

7. Mr. Arote, learned counsel for the Appellants submitted that, the Respondent No.2 is living in relationship, as partner of the husband of the Appellant No.1 and it is due to their matrimonial discord, the husband of the Appellant No.1 has put-up the Respondent No.2, for lodging the present crime.

I find substance in the said contention. Even otherwise, for the last alleged incident, which took place on 4th December 2020 at about 4.30 p.m., the present crime has been registered on 5th January 2021. Admittedly, the alleged last incident dated 4th December 2020, has not

taken place within the public view. The explanation given for lodgment of present crime belatedly appears to be untenable and is not convincing.

8. It further appears that, the Appellant No.2 being a friend of the Appellant No.1, who is helping her in her difficult times, has also been implicated in the present crime.

9. In view of the above, the Appellants deserves to be protected by pre-arrest bail.

Interim relief granted by Order dated 9th February 2021 is confirmed.

10. Appeal is allowed in the aforesaid terms.

(A. S. GADKARI, J.)