

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 222 OF 2021

ABC

...APPELLANT

Versus

1. The State of Maharashtra
through Kalyan Taluka Police Station,
Kalyan.

2. XYZ

...RESPONDENTS

...

Mr. Nitesh Mohite for appellant.

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

Mrs. Shabnam Indorewala appointed for Respondent No. 2-absent.

...

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

RESERVED ON : 10th 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 the order dated 09.02.2021 passed by the Additional Sessions Judge, Kalyan, in Special Case No. 216 of 2020, thereby rejecting the application of the appellant for releasing him on bail, this appeal is preferred.

3. Learned counsel for the appellant submits that the appellant was arrested on 20.09.2020 and since then he is in jail and there is no possibility of commencing trial in near future. The chargesheet is already filed and, therefore, there is no need to detain appellant in jail. The medical report of the victim would clearly reveal that there are no injuries on her body and hymen and also there was no bleeding, no tear, no edema on the part of body of the victim and, therefore, the medical evidence completely demolishes the prosecution case. The alleged incident occurred on 16.08.2019, however, the FIR has been registered on 17.08.2019. If the appellant is released on bail he will be in a better position to contest the trial. The appellant, if released, would abide by all the conditions as imposed upon him. The entire prosecution story of alleged act by the appellant is false and just to rope in the appellant the said FIR is registered.

4. On the other hand, the learned APP appearing for Respondent-State relying upon the reasons assigned in the impugned order, so also

allegations in the FIR, chargesheet and its accompaniments submits that the appellant has indulged in a very serious and heinous offence and, therefore, he does not deserve leniency. In case, the appellant is released on bail he may tamper with the prosecution witnesses and evidence.

5. Heard the learned counsel for the appellant and learned APP appearing for Respondent-State. Advocate appointed for Respondent No. 2 is not present. With the able assistance of learned counsel for the appellant and learned APP, we have carefully perused the allegations in the FIR, wherein it is stated that the complainant and accused are residing adjacent. Accused demanded water from the complainant and when she brought water to give it to the accused, the accused caught hold her and dragged in the house and closed the door from inside. When the victim asked the accused why he is closing the door from inside and let her go out, the appellant threatened her and asked her to sleep on the mat. Thereafter, the appellant removed his towel tied around the waist and nicker, committed sexual assault on the victim. The victim in no uncertain words stated that the accused committed forceful physical assault without her consent. It is true that the incident occurred on 18.08.2019 at about 2.00 p.m., however, the incident was reported by the victim to her mother at 7.00 p.m., when her mother returned back to the house from job and the FIR was lodged on second day of the incident. It

cannot be said that there was inordinate delay in lodging the FIR. In the cases, where there are allegations of sexual assault, the parents of the victim are always slow to lodge the FIR, out of fear of losing reputation in the society. It has come on record that the age of the victim at the relevant time was in between 16 to 17 years as shown in the certificate issued by the radiologist. The CA report is produced along with the chargesheet which shows blood stain on towel and nicker. The statement of the victim is recorded under Section 164 of Cr.P.C., wherein there is specific mention about the sexual assault by the appellant. During the course of investigation, the investigating officer has recorded the statement of alleged eye witnesses who saw the victim in frightened condition. Admittedly, the accused is of 27 years of age and a married person. It is not necessary to give elaborate reasons, which would unnecessarily prejudice the case of the appellant and prosecution during the course of trial.

6. For the reasons stated in foregoing paragraphs, we are not inclined to entertain the appeal. Hence, the appeal stands dismissed.

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

8. 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.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)