

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 273 OF 2021

ABC

...APPELLANT

Versus

1. The State of Maharashtra
Through Sr. P.I. of Jejuri Police Station,
Pune, Rural, Dist. Pune.

2. XYZ

...RESPONDENTS

...

Mr. Ranjeet Pawar for appellant.

Ms. Priyanka H. Chavan appointed for Respondent No. 2.

Mrs. A.S. Pai, PP for State.

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

RESERVED ON : 17th 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 12.11.2020 passed by the learned Special Court at Shivaji Nagar, Pune, thereby rejecting the bail application of the appellant, the present appeal is filed.

3. Learned counsel for the appellant submitted that the alleged incident has taken place on 09.07.2020, however, the FIR has been belatedly registered on 13.08.2020. It is submitted that the 2nd respondent was given in the custody of parents, thereafter the FIR came to be registered. There are no independent witness to support the prosecution case as it is evident from the perusal of the chargesheet and its accompaniments. That there is no evidence to support the claim of the 2nd respondent that there was forceful sexual intercourse. There are no external physical injuries on the person of the 2nd respondent. Doctor has observed 'multiple old healed hymnal tear'. The 2nd respondent has not stated anything in the FIR that the appellant abused her on cast. At the most alleged offence against the appellant is under Section 354-A of the IPC, which is a bailable section. The chargesheet is already filed and no purpose will be served by continuing the stay of the appellant in the jail. Learned counsel further submits that since arrest, the appellant is in jail and the trial is not likely to be commenced in the near future, therefore, the appellant deserves to be released on bail.

4. On the other hand, Ms. Priyanka Chavan, the learned counsel appointed to represent the 2nd respondent invites our attention to the allegations in the FIR, chargesheet and its accompaniments and other material collected during the course of investigation and submits that along with co-accused Aadesh Jadhav, the appellant and other co-accused with an intention to sexually harass the 2nd respondent took her away from her parents house and solemnized marriage of 2nd respondent with Aadesh Jadhav. After said alleged marriage said Aadesh Jadhav and the appellant and other co-accused intended to have sexual relations with 2nd respondent and the said alleged marriage was solemnized with an intention to cheat the 2nd respondent and have sexual relations with her. It is submitted that the medical evidence completely supports the prosecution case. Therefore, in case the appellant is released on bail, he may tamper with prosecution witness and evidence. It is submitted that similar offences like as alleged in the impugned FIR are on rise in the society and unless accused are deal with iron hands, commission of such offences will not be reduced. Outcome of such offences has great impact upon the society. The alleged offences are under Section 376(2)(n), 354-A of IPC and Section 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that the 2nd respondent belongs to scheduled caste and, therefore, aforesaid provisions under the special Act will apply with its full force. Hence, the appeal deserves

to be dismissed.

5. Learned PP appearing for Respondent-State joined the prayer of learned counsel appointed for the 2nd respondent and submits that the appeal may be dismissed.

6. We have carefully considered the rival submissions. With the able assistance of learned counsel appearing for the parties, we have perused the grounds in the appeal memo, annexures thereto, allegations in the FIR and chargesheet and its accompaniments. It appears from the prosecution case that the present appellant and other co-accused were instrumental in solemnizing marriage of 2nd respondent with Aadesh Jadhav though the latter was a child in conflict with law at the relevant time. The appellant and other co-accused were instrumental in taking away the 2nd respondent with promise that the Aadesh will marry with her and accordingly though the said Aadesh Jadhav was child in conflict with law, the marriage was solemnized with the 2nd respondent in the presence of appellant and other co-accused. It is alleged in the FIR that after said marriage the appellant tried to have sexual intimacy with the 2nd respondent though he knew that the 2nd respondent is married. It is alleged that the appellant tried to make unwelcome advances to have physical contact with the 2nd respondent and also demanded sexual favour, knowing that the 2nd respondent is married and belongs to scheduled caste. The role of the

appellant is not restricted to asking only for sexual favour and to have physical contact with the informant, but he accompanied other two co-accused and participated in solemnizing marriage of the 2nd respondent with Aadesh Jadhav, who was child in conflict with law at the relevant time. If the entire circumstances and chain of events is taken into consideration, the involvement of the present appellant is disclosed. As rightly submitted by the learned counsel for 2nd respondent that similar offences like alleged in the present FIR are increasing day by day and posing threat to the security and interest of women in the society and outcome of such offences have great impact upon the society.

7. In the light of discussion in foregoing paragraphs and after perusal of the allegations in the FIR, chargesheet and its accompaniments, we are of the *prima facie* opinion that in case the appellant is released on bail there is every likelihood of tampering with the prosecution witnesses and evidence. Therefore, this is not a fit case to enlarge the appellant on bail. Hence, the appeal stands dismissed.

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

9. 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.

10. We appreciate the able assistance rendered by Advocate Ms. Priyanka Chavan, 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.)