

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

CRIMINAL APPEAL NO. 452 OF 2020

ABC

...APPELLANT

Versus

1. The State of Maharashtra
Through Pandharpur Taluka Police
Station, Tal. Pandharpur,
Dist. Solapur.

2. XYZ

...RESPONDENTS

...
Mr. Shriram S. Chaudhari for Appellant.
Mr. Pawan Mali for Respondent No. 2.
Mrs. S.D. Shinde, APP for State.

...

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON- 23rd FEBRUARY 2021.
PRONOUNCED ON- 25th FEBRUARY, 2021.**

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

. At the outset it is required to be noted that since the allegations against the appellant are in respect of the alleged sexual assault, the identity of the appellant and Respondent No. 2 needs to be concealed, and they are referred to as “ABC” and “XYZ”. The Registry is directed to maintain the record accordingly.

2. Being aggrieved by the order passed by 04.07.2020 passed below Exhibit-6 in bail application filed in Special Case No. 11/2020 by the learned Additional Sessions Judge, Pandharpur, thereby rejecting the prayer of the appellant to release him on bail, this appeal is filed.

3. Learned counsel appearing for the appellant submits that the except bare words of the victim there is no other evidence to lend support to the allegations made in the FIR. The investigation officer has invoked provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'said Act'), without any basis. There is no specific averments in the FIR which would attract the provisions of Sections 3 (1)(w)(ii) and 3(2)(va) of the said Act. The appellant is in custody for more than seven months. *Prima facie* there is absolutely no evidence to connect the appellant with the alleged offence. The appellant is ready to co-operate with the investigation officer and will abide by the conditions as would be imposed while granting bail.

4. On the other hand, Mr. Pawan Mali, learned counsel appearing for Respondent No. 2 submits that the victim girl is deaf and dumb and mentally challenged to some extent. Her evidence coupled with the deposition of her mother is sufficient to disbelieve the contention of the appellant that he is not involved in the alleged offence. Learned counsel

invites our attention of this Court to the unreported judgment of the Hon'ble Supreme Court in the case of The State of Maharashtra Vs. Bandu @ Daulat, and submits that in the facts of that case, keeping in view the fact that the victim therein was deaf and dumb and mentally challenged, the Supreme Court reversed the acquittal order passed in favour of appellant therein and convicted the appellant therein to undergo seven years sentence.

5. Learned APP appearing for Respondent-State invites our attention to the statement of various witnesses and also other accompaniments of the charge sheet and submits that the appellant has committed very serious offence, therefore, appeal may not be entertained.

6. We have given due consideration to the rival submissions. Perused the grounds taken in the appeal memo, so also, annexures thereto and charge sheet and its accompaniments. Upon careful perusal of the statement of witnesses and in particular statement of victim and her mother, the contention of the learned counsel for the appellant cannot be accepted that the *prima facie* prosecution has failed to show the involvement of the appellant. The fact that the victim is deaf and dumb is brought on record by the prosecution. The Special/Trial Court keeping in view the fact that the victim is mentally ill women and belongs to scheduled caste has been sexually assaulted by the appellant, and after perusal of the charge sheet

noted that the certificate of victim shows that she suffers 66% disability. Therefore, Additional Sessions Judge, Pandharpur, concluded that no case is made out for enlarging the appellant on bail. On independent scrutiny, we find that the prosecution has collected sufficient material and trial can proceed against the appellant. *Prima facie* the statement of victim and her mother firmly supports the prosecution case. In case the appellant is released on bail there is every possibility of tampering with the prosecution witnesses and evidence by the appellant. The victim appears to be from poor strata of the society. In that view of the matter, the prayer of the appellant to enlarge him on bail stands rejected. Consequently appeal stands dismissed.

7. We direct the concerned Trial Court to expedite the trial and conclude the same as early as possible, however within six months from the receipt of this order.

8. The observations made herein above are prima facie in nature and confined to the adjudication of the present appeal only. The Trial Court shall not get influence by the observations made herein above, during the course of trial.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)