

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

CRIMINAL APPEAL NO. 37 OF 2021

Mr. Hasan Jamir Shaikh
Age : 26 Years, Occ.: Labour,
R/at Nangaon, Tal. Chakur,
District Latur
Presently lodged in Central Prison
at Latur

.... Appellant

Vs.

1. The State of Maharashtra
Through Police Inspector,
Bigwan Police Station, Dist. Pune

2. Mrs. Parvati Nasim Kale
Age : 30 years,
R/at : At Post Shahunagar,
Tal. Indapur, District Pune

.... Respondents

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Mr. Ranjeet M. Pawar for Appellant.
Mrs. S.D. Shinde, APP for Respondent- State.
Mr. Karl P. Rustomkhan appointed Advocate for Respondent No. 2

**Coram : S.S. SHINDE AND
MANISH PITALE, JJ.**

**JUDGMENT RESERVED ON : 22.03.2021
JUDGMENT PRONOUNCED ON : 09.04.2021**

JUDGMENT : (PER MANISH PITALE, J.)

1. By this appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “Atrocities Act”), the Appellant has challenged the order dated 1st June, 2020 passed by the Court of Additional Sessions Judge, Baramati (“Sessions Court”), whereby the bail application filed by the Appellant was rejected.

2. The Appellant is accused No.1 for offences registered under Sections 394, 341, 376, 504, 506 read with 34 of the Indian Penal Code and Sections 3(1)(r)(s)(w), 3(2)(v-a) of the Atrocities Act.

3. As per the F.I.R. registered at the behest of Respondent No.2 (original informant), the Appellant alongwith two other accused persons stopped the Respondent No.2 and her husband

when they were travelling on a motorcycle. They threatened husband of Respondent No. 2 with knife and thereafter took away golden ornaments alongwith mobile handset as also cash. The Appellant allegedly committed rape on Respondent No. 2. Although the F.I.R. was initially registered against three unknown persons, thereafter Respondent No.2 identified the accused persons. The Appellant was arrested and on completion of investigation, charge- sheet was filed.

4. The Appellant moved bail application before the Sessions Court claiming that he was entitled to grant of bail because the material brought on record alongwith chargesheet was not sufficient to indicate involvement of the Appellant in the crime. The Respondent State opposed the application filed by the Appellant. By the impugned order, the Sessions Court rejected the bail application, holding that the Appellant was not entitled for grant of bail.

5. Mr. Ranjeet Pawar, learned counsel appearing for

Appellant submitted that the Sessions Court committed an error in rejecting the bail application of the Appellant for the reason that the material on record was not sufficient to link the Appellant with the incident in question. It was submitted that there were glaring defects in the manner in which the identification parade was carried out and that the Appellant was being wrongly implicated in the present case. It was further submitted that there was no recovery from the Appellant and there was no material to show that offences under the provisions of the Atrocities Act could be attracted on the allegations levelled by Respondent No. 2. It was further submitted that the medical examination of Respondent No. 2 also did not support the allegations made against the accused persons and that therefore the Appellant was entitled to grant of bail.

6. Mr. Karl Rustomkhan, learned counsel appointed for appearing on behalf of Respondent No. 2 submitted that the alleged defects in identification parade could not be gone into at

this stage and that the material on record was sufficient to indicate involvement of the Appellant in the incident in question. It was submitted that the offences alleged against the Appellant were serious in nature and that therefore he did not deserve to be enlarged on bail.

7. Mrs. S.D. Shinde, learned APP appeared on behalf of Respondent- State and opposed the present appeal. The learned APP brought to the notice of this Court that there are large numbers of cases registered against the Appellant and that he is a habitual offender. It is submitted that if the Appellant was granted bail, there was every possibility of the informant and the witnesses being pressurised by the Appellant.

8. We have heard the learned counsel appearing for the rival parties and perused the material on record. The F.I.R., statements of witnesses and other material placed on record alongwith the charge-sheet show that the present case involves

serious offence of rape and offences under the Atrocities Act. Although the F.I.R. was registered against three unknown persons, the Appellant subsequently identified the accused persons and specifically alleged against the Appellant that he had committed rape on her. The supplementary statement of the Respondent No. 2 shows that she has levelled specific allegations against the Appellant. The alleged defects in the procedure adopted during the identification parade can be gone into later and at this stage, it cannot be said that the Appellant deserves any benefit in that regard. The Respondent No.2 has stated regarding the manner in which the incident occurred and there are statements of witnesses supporting her version.

9. The emphasis sought to be placed by the learned counsel for the Appellant on medical report not supporting the case of the Respondent No. 2, cannot be accepted at this stage for the reason that there are injury certificates on record showing that the informant and her husband did suffer injuries in the said

incident. The extent to which the medical report will support the case of prosecution, is a matter of evidence and the Appellant cannot be granted benefit of the same at this stage.

10. It is significant that in the report forwarded by the learned APP, it has come on record that as many as 19 cases have been registered against the Appellant for serious offence, including offences under Section 394 and 454 of Indian Penal Code. The Appellant appears to be a person indulging in such crimes frequently, thereby indicating that if he is released on bail, there is possibility of the informant i.e. Respondent No. 2 and the witnesses being pressurized. This is an additional reason for which we are not inclined to interfere with the impugned order passed by the Sessions Court.

11. In view of above, the appeal is found to be without any merits and accordingly dismissed.

12. We appreciate the assistance rendered by Mr. Karl P.

Rustomkhan, learned Advocate appointed on behalf of the Respondent No.2 (original informant). His fees for the appearance is quantified at Rs.7,500/- to be paid within one month from receipt of this order by High Court Legal Services Committee, Mumbai.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)