

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.546 OF 2021

ABC

.... Appellant

Versus

The State of Maharashtra and another

.... Respondents

....

Mr. P.C. Mohite, Advocate for the Appellant.

Ms. S.D. Shinde, APP for Respondent No.1-State.

Mr. Devidas Ramesh More, Advocate for Respondent No.2.

....

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 15 DECEMBER 2021

P.C.

By this appeal, the Appellant has challenged the order dated 28 May 2021 passed by the learned Special Judge rejecting the application for bail filed by the Appellant and the Appellant prays to be released on bail.

2. The Appellant is an accused in C.R. No.4/2021 registered with Vashind police station, District-Thane for the offences punishable under Sections 376, 452 of the Indian Penal Code, Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)I.II, 3(1)(v-a) of the amended Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,

1989.

3. The Appellant was working as a Forest Guard. As per the case of the prosecution, the minor-survivor, a 16 years old girl belonging to tribal community was staying near a forest check-post where the Appellant was working. The minor used to go past the check-post regularly and according to the prosecution the Appellant had developed ill-intentions. When the minor returned home, was alone and was lighting fire in the kitchen, the Appellant entered and forcibly committed sexual intercourse. The statements of the witnesses have been recorded. In the statements the witnesses have stated that they saw the accused running away from the room and the minor crying and shouting for help and was in a state of half undressed. The learned Special Judge considering these aspects rejected the application for bail.

4. The learned counsel for the Appellant submitted that there is variance between the statement of the minor-survivor and the statements of other witnesses, in as much as, the minor had stated that she had gone and informed others about the incident, while the other witnesses stated that they saw the Appellant running away and that the minor was shouting for help. There is no merit in the contention. As regards the alleged act committed by the Appellant, there is consistency. From this variance it cannot be straightaway presumed that the Appellant is falsely implicated.

5. The argument that no blood was found on the clothes of the Appellant overlooks the fact that the panchnama was carried out next day of the incident. It was also contended that father of the Appellant has admitted that there was a love affair. Apart from this trying to influence the witnesses, the learned Special Judge has categorically doubted the identity of the person claiming to be father of the minor. The learned APP contended that one of the witnesses has also stated that, when apprehended, the Appellant sought to offer money to resolve the issue. Considering the fact that the minor survivor was a tribal girl and the Appellant was working as a Forest Guard exercising a dominant position and considering the statements, we find that no case is made out for bail.

6. The appeal is dismissed.

7. As regards the prayer of the Appellant for expediting the trial is concerned, it is open to the Appellant to make a request to the learned Special Judge, and it is for the learned Special Judge to decide the same depending on the workload.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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Date: 2021.12.20
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