

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

CRIMINAL APPEAL NO. 551 OF 2021

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Shri Pranay Chandrahar Mane,
Age 26 years, Occ. Labour,
R/o. Kshetra Mahuli,
Taluka and Dist. : Satara
(Presently lodged in Kolhapur
District Prison (City))

... Appellant

Versus

1. State of Maharashtra
(At the instance of Satara City Police,
Station.)

2. XYZ

....Respondents

Mr.Sanjiv Kadam i/b Mr. Prashant P. Raul for appellant.
Mr.J.P. Yagnik, APP for respondent No.1-State.
Mr. Ajit J. Kenjale for respondent No.2.

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

Reserved for Judgment on : 28th September 2021.

Judgment Pronounced on : 6th October 2021.

JUDGMENT (PER N.J. JAMADAR, J.)

1. This appeal under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC&ST Act, 1989') is directed against the order dated 19th May 2021 on an application (Exh.13) in Spl.(POCSO) Case No.64/2021, whereby the

learned Special Judge was persuaded to reject the application of the appellant-accused for bail.

2. The background facts leading to this appeal can be summarized as under :-

(a) The appellant has been arraigned in C.R. No. 94/2021 registered with Satara City Police Station for the offences punishable under sections 376(2)(n), 376(3), 307, 354(d), 323, 452 and 506 of the Indian Penal Code, 1860 ('the Penal Code') and sections 3(a), 4, 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), for having sexually exploited the victim, a 14 year old girl, who is a member of the Scheduled Caste, by threatening to defame her and kill her parents. The first incident of exploitation allegedly, occurred in the month of October 2020. The appellant had forced the victim to come on the terrace of her house and had sexually exploited her twice thereafter.

(b) On 2nd February 2021, the appellant allegedly attempted to strangle the victim when

she resisted the attempt of the appellant to molest her. In the process, the victim suffered injury on her nose. On the morning of 3rd February 2021, upon being inquired, the victim narrated the incident to her mother and subsequently report was lodged with the police.

(c) Investigation commenced. The appellant came to be arrested on 3rd February 2021. During the course of investigation, the victim was medically examined. Post completion of investigation, charge-sheet has been lodged.

(d) The appellant preferred an application for bail. By the impugned order, the learned Special Judge was persuaded to reject the application opining, *inter-alia*, that the appellant was *prima-facie* involved in a grave offence. At the same time, the learned Special Judge directed the prosecution to expedite the trial.

(e) Being aggrieved by and dissatisfied with the impugned order, the accused is in appeal.

3. Admit. Taken up for final hearing.

4. We have heard Mr. Kadam, the learned counsel for the appellant, Mr. Yagnik, the learned APP for the State and Mr. Ajit Kenjale, the learned counsel for respondent No.2. With the assistance of the learned counsels for the parties, we have perused the material on record including the report under section 173 of the Code of Criminal Procedure, 1973 ('the Code') and its accompaniments.

5. Mr. Kadam, the learned counsel for the appellant advanced a multi-fold submission. Firstly, the allegations in the first information report lodged by the victim, according to Mr. Kadam, *ex-facie* appear improbable. Secondly, the medical evidence belies the claim of the victim. Thirdly, there is inordinate delay in lodging the report. In the circumstances, having regard to the fact that the appellant is in custody since 3rd February 2021, and post-completion of investigation, charge-sheet has already been lodged, the further pretrial detention of the appellant is wholly unsustainable, submitted Mr. Kadam.

6. Per contra, Mr. Yagnik, the learned APP would urge that the allegations against the appellant are of grave nature. Inviting the attention of the Court to the fact that the appellant, who is 27 years of age, exploited the victim, who is barely 14 year old girl, Mr.

Yagnik would urge that the appellant does not deserve to be released on bail. None of the grounds urged on behalf of the appellant, according to Mr. Yagnik, are worthy of consideration, at this stage. The learned Special Judge has committed no error in rejecting the application, submitted Mr. Yagnik.

7. Mr. Kenjale, the learned counsel for respondent No.2, supported the submissions of the learned APP.

8. We have considered the rival submissions canvassed across the bar. To begin with, it is imperative to note that there are clear and categorical assertions in the first information report about the circumstances in which the appellant allegedly sexually exploited the victim. The appellant allegedly threatened to defame the victim, kill her parents, forced her to send her photos in objectionable state to him and made her to have forcible physical relations. The submission on behalf of the appellant regarding the delay in reporting the matter is required to be appreciated in the backdrop of the situation in life of the victim and the circumstances in which she found herself. It is trite that in the matters of sexual exploitation, especially of the children, the element of delay, does not assume decisive significance.

9. The next submission based on the absence of corroboration by medical evidence, was rested on the observations in the medico-legal examination report of the victim. Mr. Kadam laid emphasis on the report as regards the examination of external genitals to lend support to the submission that there was no evidence of sexual assault. At this juncture, we are afraid to accede to this submission. It is imperative to note that the victim had narrated before the Medical Officer, the history of exploitation and assault, which materially corresponds with the allegations in the first information report. Medical Officer also opined that the possibility of sexual assault cannot be ruled out.

10. The situation which thus obtains is that there is *prima-facie* material to show that the appellant had allegedly subjected the victim to harassment and sexual exploitation. The victim is a girl of tender age. In the backdrop of the nature of the accusation, the learned Special Judge cannot be said to have committed an error in observing that there is material to indicate *prima-facie* involvement of the accused in a grave offence, and declining to exercise the discretion in favour of the appellant. Likewise, the apprehension of tampering with evidence and threatening the victim and the prosecution witnesses, cannot be said to be unfounded.

11. We are, thus, not persuaded to take a different view of the matter and exercise the discretion in favour of the appellant.

12. Since, the learned Special Judge has given direction to the prosecution to expedite the trial, we deem it appropriate to direct that the trial be completed as expeditiously as possible and preferably within a year from the date of communication of this order.

13. Hence, the following order :-

O R D E R

(i) The appeal stands dismissed.

(ii) The learned Special Judge shall decide the Special (POCSO) Case No. 64/2021 as expeditiously as possible and preferably within a period of one year from the date of communication of this order.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]