

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1246 OF 2019

Pankaj Chandrashekhar Deore]
Age 21 years, Occ : Labour]
R/o. Pokhari Village,]
Tal. Nandgaon, District Nashik,]..... Appellant.

Versus

1] The State of Maharashtra]
Through Sub-Divisional Police]
Officer, Manmad, registered]
with Nandgaon Police Station,]
Nashik,]
2] Vijay Narayn Sonawane]
R/o. Gandhinagar, Nandgaon, Dist. Nashik]..... Respondents.

Mrs. Aisha Ansari a/w Mrs. Nasreen Ayubi for the Appellant.
Smt. A S Pai, APP for the Respondent/State.
Mr. Pawan Mali, appointed Advocate for Respondent No.2.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 15th March 2021

JUDGMENT : (PER S S SHINDE, J)

1 Admit. On admission the learned APP Mrs. A S Pai waives service of notice on behalf of Respondent No.1/State, and learned appointed advocate Mr. Pawan Mali waives service of notice on behalf of Respondent No.2. With the consent of the learned counsel appearing for the parties, the Appeal is taken up for final hearing at admission stage and heard.

2 This Appeal has been filed by the Appellant for the following

substantial relief :-

- (a) This Hon'ble Court be pleased to grant bail to the Appellant in Sessions Case No.181/2018 (C R No.I-215/2018, registered with Nandgaon Police Station, Nandgaon, Nashik)

3 The brief facts leading to filing of this Criminal Appeal can be stated thus :-

The Appellant is original accused No.1 in CR No.I-215/2018, registered against him and one other, for the offences punishable U/s. 365, 377, 324, 506(2), 504 r/w 34 of Indian Penal Code and 3(1)(1), (3), (10) of the Scheduled Caste and Tribes (Prevention of Atrocities) Act and U/s. 7(1)(2) Civil Protection Act on the basis of complaint lodged by the Complainant first informant/victim i.e. the Respondent No.2 herein. It is alleged by Respondent No.2 that 15 days prior to the alleged incident there was altercation between the Appellant and him, and the Appellant uttered some words pointing out his caste and threatened him for dire consequences. It is the allegation against the Appellant that the on 17/10/2018 the Appellant and Co-accused kidnapped Informant – Respondent No.2 and took him in lonely place which is at the plateau of mountain. There they have committed carnal intercourse against the order of nature with him. It is also alleged that the Appellant and Co-accused not only committed carnal intercourse with Respondent No.2, but also

inserted the small stones in the anus of the informant-Respondent No.2 and thereby caused injuries to him. It is also alleged that at that time, the Appellant and co-accused also threatened the informant to kill and committed oral sex with him, abused him in filthy language. Thereafter on 18/10/2018 Respondent No.2 went to Medical Officer and narrated the incident and taken the treatment. On 23/10/2018, the 2nd Respondent lodged the complaint. It is alleged that the informant – Respondent No.2 belongs to Scheduled Caste.

4 During the course of investigation, the Appellant came to be arrested on 23/10/2018 and was in custody till 29/10/20218 and thereafter he has been granted magisterial custody. The Appellant has filed 1st Bail Application No.612 of 2018 on 13/11/2018 before the learned District and Sessions Judge at Malegaon which came to be rejected by the order dated 12/11/2018. The 2nd bail application of the Appellant was also rejected on 02/02/2019. Thereafter charge-sheet came to be filed on 27/12/2018. After filing the charge-sheet, the Appellant preferred 3rd Bail Application being No.774 of 2019 on 25/04/2019 which was also rejected by the Sessions Judge, Malegaon vide order dated 20/06/2019. Being aggrieved by the said order dated 20/06/2019, the Appellant preferred this Appeal for the relief which is referred to herein above.

5 Heard the learned counsel for the parties. With their able

assistance we have perused the pleadings and grounds taken in the Appeal and the annexures thereto.

6 It is submitted by the learned counsel appearing for the Appellant that there was a delay of 6 days in lodging the complaint by the victim and there is no explanation offered by the victim for the said delay. It is also submitted that the statements of the witnesses recorded by the police are stereotyped statements. It is submitted that while rejecting the bail application of the Appellant, the trial Court did not consider the medical report dated 23/10/20218 in its proper perspective. Lastly it is submitted that the investigation is over and charge-sheet is filed, and therefore, the custody of the Appellant is not required by the police. The learned counsel for the Appellant therefore, prays that this Appeal may be allowed and bail may be granted to the Appellant.

7 On the other hand, the learned APP appearing for the Respondent/State vehemently opposed the prayer of the Appellant for the grant of bail to him. She submitted that the Appellant has committed a heinous crime. She submitted that if the Appellant is released on bail, there is a danger to the life of the victim and the prosecution witnesses. She therefore submitted that the Appeal may be rejected.

8 We have perused the entire papers placed on record including the charge-sheet, statements of witnesses, medical report etc. The Medical Officer has examined the victim and he noticed multiple burn marks on the right thigh of the victim, several tenderness at anus, burn trauma to chest and both shoulders of the victim.

9 In so far as delay in lodging the complaint is concerned, the victim has narrated the incident to the medical officer on the next day of the alleged incident and has taken the medical treatment. However, considering the heinous crime committed by the Appellant with the victim, the complainant was afraid and it was very disgraceful for the victim to go to police station and lodge the complaint and, because of apprehension of defamation, he did not go to police station and lodge the complaint immediately against the Appellant and co-accused. When the nephew of victim came to know about the alleged incident, he gave support and courage to the victim, and thereafter the victim went to police station and lodge the complaint on 20/10/2021. Prima facie the explanation given by the victim appears to be plausible.

10 Perusal of the version of the victim, the statements of the witnesses, the medical report, we are of the considered view, that there is overwhelming incriminating material which has been collected by the Investigating Officer during the course of investigation. We find substance in

the submission made by the learned APP appearing for the Respondent/State that, the Appellant has committed a heinous crime and at the same time he threatened the victim to kill him. If the Appellant is released on bail, he may cause danger to the life of the victim as well as the witnesses. Considering the material and evidence placed on record, the appellant is not entitled for bail. Since the Appellant will have to face trial, it is not desirable to elaborate on evidence.

11 For the reasons stated in the foregoing paragraphs, the Appeal is required to be dismissed and is accordingly dismissed. However, we direct the Trial Court to frame charge within four weeks from today, if already not framed, and proceed with the trial and complete the same as expeditiously as possible, however, within four months from the receipt of the copy of this order. In case, the trial is not completed within the aforesaid time, liberty is granted to the Appellant to review the prayers in the Appeal.

12 It is made clear that the observations made herein above are confined to the adjudication of this Criminal Appeal, and the concerned trial Court shall not get influenced by the observations made here in above and shall proceed with the trial in accordance with law.

[MANISH PITALE, J]

[S. S. SHINDE , J]