

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 446 OF 2021

1. Rajaram S/o. Shankar Kharat,
aged about 42 years, Occ. Labour
2. Bhailal s/o. Ghanda Jamara
(Pawara), aged about 47 years,
Occ. Labour
3. Khumsing Gyansing Pawara,
aged about 55 years, occ. Labour
4. Arma Hajarya Jamara (Pawara),
aged about 45 years, Occ. Labour
All R/o Gorada, Tq. Jalgaon
Jamod, Dist. Buldhana.

...APPELLANTS

VERSUS

1. State of Maharashtra,
Through Officer-in-charge of
Police Station Jalgaon Jamod,
Tahsil Jalgaon Jamod,
District Buldhana.
2. Antra @ Anita D/o. Malsing Sastya
(Barela), aged about 19 years,
R/o Borala, Mohidepur, Tahsil Jalgaon
Jamod, District Buldhana through her
mother Smt. Manjaribai Malsing Sastya
(Barela).

...RESPONDENTS

Shri H.R. Gadhia, Advocate for the appellant.
 Shri I.J. Damle, A.P.P. for respondent no.1/State.
 Ms Smita Singalkar, Advocate for respondent no.2.

CORAM : VINAY JOSHI, J.
DATED : 20/12/2021

ORAL JUDGMENT :

1. Heard. **ADMIT**. By consent, the appeal is taken up for final hearing.
2. The appellants are seeking for regular bail in terms of Section 439 of the Code of Criminal Procedure in Crime No.491 of 2021 registered with Police Station Jalgaon Jamod, District Buldhana for the offence punishable under Sections 376(2), 376(2) (i), 376(2)(n), 315 and 318 read with Section 34 of the Indian Penal Code. The appellants have claimed bail on the ground of innocence, false implication and inadequacy of evidence. Besides that, it is contended that already investigation is complete and charge-sheet has been filed.
3. The State resisted bail by filing reply-affidavit. The learned Counsel appearing for victim (respondent no.2) also resisted bail by making submission.
4. The case in hand bears unusual facts. On the basis of anonymous letter, police have registered crime for the offence of rape. It is the prosecution case that a victim was mentally retarded village girl. Co-accused Devidas Bombatkar taking disadvantage of said fact had sexually exploited the girl. Out of that, the victim carried pregnancy of seven months. The matter was taken before village

panchayat of which appellants were panchas. It was decided by panchas that the family members of victim and the main culprit Devidas Bombatkar should settle the issue for monetary consideration. On settlement, child was aborted and fetus was destroyed. After learning the things, the police inquired and report has been lodged.

5. Since the victim belongs to the member of Scheduled Tribe, the offence under the provisions of Scheduled Caste and Scheduled Tribe has also been registered. The appellants' learned Counsel has pointed out from the charge-sheet itself that all appellants also belongs to Scheduled Tribe. There is no resistance to said submission. Therefore, applicability of the provisions of Scheduled Caste and Scheduled Tribe Act itself is in question.

6. It reveals from entire charge-sheet that the appellants were alleged to have committed offence punishable under Sections 315, 318 and 201 of the Indian Penal Code. Perusal of police paper indicates the entire story. The co-accused Devidas had sexually exploited the mentally retarded girl during the month of September, 2020 from which she carried pregnancy. When the said fact was made known to the family members of the victim, they contacted prime accused and his family members. Thereafter, a panchayat meeting was held in which it

was suggested that the matter shall be settled on monetary compensation to be paid to the victim's family. Accordingly, a sum of Rs.2,00,000/- was paid and the matter was settled. In view of settlement, it was decided to abort the fetus hence, a lady namely Premila Chowke (accused no.10) was called for that purpose. The said lady has used some herbs for aborting the child. The child was found dead on the following day. Since the matter was settled in presence of panchas, the fetus was burnt.

7. From perusal of police papers, it is evident that the role of appellants, who were members of panchayat is to facilitate settlement and in their presence fetus was burnt. In order to attract the provisions of Section 315 of the Indian Penal Code, there should be a positive intentional act to prevent the child from being born alive or causing it to die after its birth. Prima facie it reveals that those allegations are against accused no.10 Pramila Chowke. The prosecution is not in a position to show any other material against the appellants. Apparently, the main allegations of rape and aborting child are against someone else than the appellants.

8. It reveals that the appellants are in jail from 19/07/2021. Already investigation is complete and charge-sheet has been filed. The

trial will take considerable time for its disposal. The aspect of tampering can be taken care of by imposing appropriate conditions. Having regard to all these facts, this is fit case to exercise judicial discretion in releasing appellants on bail. Hence following order:

- (a) Appeal stands allowed.
- (b) Impugned order dated 23/09/2021 passed by Additional Sessions Judge, Khamgaon is hereby quashed and set aside.
- (c) Appellant nos. 1 to 4 are released on bail on their furnishing P.R. Bond of Rs.25,000/- each with one surety each in the like amount.
- (d) Appellants shall attend concerned police station on every alternate Sunday in between 12.00 noon to 02.00 p.m. for the period of one year from today.
- (e) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

9. Fees be paid to the appointed Counsel, as per Rules.

JUDGE

R.S. Sahare