

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

991 CRIMINAL APPEAL NO.59 OF 2022

SHRIKANT SANJAY CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Sunil P. Koli, Advocate holding for
Mr. Dattatraya Jadhavar, Advocate for the appellant.
Smt. P.V. Diggikar, A.P.P. for respondent No.1 - State.
Mr. S.M. Pandit, Advocate for respondent No. 2.

...

CORAM : **V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 30-03-2022.

P.C. :

1. The appellant – accused in connection with Crime No.68/2020 registered with Lohara Policed Station, Taluka Lohara, District Osmanabad for the offences punishable under Sections 366, 376D, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3 (1) (r), 3(1) (s), 3 (1) (w), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is seeking regular bail. His application with similar prayer came to be rejected by the Additional Sessions Judge, Omerga, District Osmanabad vide order dated 01.12.2021 passed below Exh. 1 in Criminal Bail Application No. 167 of 2021. In terms of Section 14A (1) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant has preferred this appeal against rejection of his application seeking bail.

2. It appears that on the basis of the complaint lodged by respondent No.2, who is a major married woman, the aforesaid crime came to be registered against the appellant for having committed rape on her. The appellant – accused allegedly remained absconding after commission of the crime and thus charge-sheet came to be submitted against him initially under Section 299 of the Code of Criminal Procedure. However, after the appellant was arrested in connection with the crime, supplementary charge-sheet came to be submitted against him. It is the case of the appellant – accused that he was not absconded and on the other hand he had filed application for anticipatory bail before the Court. However, after his arrest his application for anticipatory bail has become infructuous.

3. Learned Counsel for the appellant – accused submits that respondent No. 2 – informant is 24 years of age and a married woman. It has been alleged that in the complaint that on 11.03.2020 when respondent No.2 –

informant slept in her room alongwith her husband and children, at about 11.00 p.m. appellant and co-accused went to her house, took her forcibly with them on motorcycle and committed rape on her behind one Dhaba at Lohara. It has been further alleged in the complaint that she was thereafter taken to various places including Tuljapur, Pune, Talegaon. Learned Counsel for the appellant submits that respondent No.2-informant has alleged in the complaint that she was subjected to forcible intercourse on 13.03.2020 in one room at Talegaon. However, thereafter the present appellant went outside for withdrawing the amount from the ATM and did not return. Respondent No. 2 has further alleged that she waited for him in the said room till 19.03.2020 and thereafter on her own, came to her village by boarding a bus in the night at Pune. Learned Counsel submits that had it been commission of rape by forcibly taking away respondent No.2, she would not have stayed for a long period in the said room at Talegaon waiting for the applicant to return to the room. Learned Counsel for the appellant submits that as per the allegations made in the complaint, there appears to be consensual relations. The appellant – accused is in jail in connection with the present crime since 26th October 2021. There are no antecedents. The appellant is ready to abide the

conditions.

4. Learned Counsel for respondent No. 2 – informant submits that the allegations are serious in nature. Respondent No. 2 belongs to Maang caste. She was ravished by the appellant. She was taken from her house forcibly under the threats and the appellant and co-accused had repeatedly committed rape on her. Prima facie there is a strong case against the appellant – accused. He may not be released on bail.

5. Learned A.P.P. submits that prima facie there is a strong case against the appellant. There is possibility of tampering of the prosecution evidence. The appellant may not be released on bail.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that respondent No. 2 who is a married woman, aged 24 years, has made allegations about commission of rape against the appellant and co-accused. It is informed to us that the trial Court has already released co-accused Sunil Sham Rathod on bail by order dated 07.07.2020 in Criminal Bail Application

No.93/2020 in connection with the present crime. Though respondent No. 2 has made allegations about the threats given to her and she was forcibly taken to some other place on motorcycle and subjected to rape repeatedly, however, it appears from the allegations made in the complaint that when she was taken to Talegaon and subjected to rape on 13.03.2020 and 14.03.2020 by the present appellant and when the appellant had gone outside of the room for withdrawing the amount from ATM and did not return, she waited for him in the same room till 19.03.2020 and thereafter went to bus stand, Pune and returned to village by boarding a bus. Prima facie, it appears that there were consensual relations between them. Had it been the case of rape, respondent No. 2 – informant would not have stayed in the said room waiting for the appellant to return to the room. The appellant is in jail since the date of his arrest. His further detention is unwarranted and uncalled for. Thus, by imposing certain conditions, we are inclined to release the appellant – accused on bail. Hence, the following order.

ORDER

- (i) Criminal Appeal is hereby allowed.
- (ii) The appellant Shrikant Sanjay Chavan in connection with Crime No. 68/2020

registered with Police Station, Lohara, Taluka Lohara, District Osmanabad for the offences punishable under Sections 366, 376D, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3 (1) (r), 3(1) (s), 3 (1) (w), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, be released on bail on furnishing personal bond of Rs. 20,000/- (Rupees Twenty Thousand) with one solvent surety in the like amount, on the condition that he shall not tamper the prosecution evidence in any manner.

(iii) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)