

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

950 CRIMINAL APPEAL NO.70 OF 2022

**MAHESH SRIMANT ADSUL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Appellant: Mr. S. S. Thombre

APP for Respondents: Mr. M. M. Nerlikar

Advocate for Respondent No.2:

Ms. Jayashri P. Reddy (*appointed*)

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**CORAM: SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE: 13th JULY, 2022

PER COURT:

1. By this Application the Applicant is challenging the order dated 06.01.2022 passed by the Additional Sessions Judge-3, Osmanabad in Criminal Bail Application No.415 of 2021 wherein, the Applicant's prayer for bail was rejected. The Appellant was arrested on 19.08.2021 for commission of offence punishable under Sections 376(1), 323, 506 of the Indian Penal Code, 1860 and under Sections 3(1)(w)(i), 3(2)(va), 3(2)(s) of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989.

2. The learned Judge in rejecting the Bail Application had observed that the material on record shows that the offence was established. There is nothing on record to show that there was love affair between the Appellant and the victim. The offence was serious and there was apprehension expressed by the prosecutrix that her life would be in danger.

3. Learned Counsel for the Appellant submitted that it was a case of consensual physical relations. Both the prosecutrix as well as the Appellant were having love affair which is reflected from the Photographs which are produced with this Appeal. These photographs are clearly indicating that the prosecutrix was having affair with the Appellant and, therefore, no offence is made out. There was no forcible physical relations.

4. Learned APP as well as learned Counsel for Respondent No.2 opposed this Appeal. Learned APP pointed out the statement dated 29.06.2022

given by the prosecutrix in respect of those Photographs wherein she has stated that she and the Appellant are seen in those photographs but she had not taken any photographs with the Appellant.

5. Besides this, learned APP as well as learned Counsel for Respondent No.2 relied on the allegations made in the F.I.R.

6. We have heard learned Counsel for the Parties.

7. The F.I.R. is lodged by the prosecutrix on 19.08.2021. She has stated that she was belonging to Pardhi community. She was residing with her husband, father-in-law and other relatives. Few days prior to the F.I.R. she had exchanged the telephone numbers with the Appellant. On 05.07.2021 he had contacted the informant from an unknown mobile phone. At that time the phone was received by the informant's husband and, therefore, it was disconnected. On

06.08.2021 when she was returning home from Kothalwadi Anganwadi School the Appellant followed her. She called his father and told him about the Appellant's behavior.

8. On 14.08.2021 again the Appellant followed her and when they reached near a farm he asked her to stop. He took her near a sugarcane crop in the field. She went there thinking that somebody from her family would be there. In that farm he kept forcible physical relations against her wish and threatened her. After that he left her. She did not tell this incident to anybody.

9. On 17.08.2021 the appellant gave a call from his mobile phone. At that time it was received by the informant's husband. On 18.08.2021 again the Appellant followed her and told her to have physical relations with him. She refused and at that time the Appellant assaulted and threatened her. It is her case that she told this incident to her husband and other family members and, thereafter, this F.I.R. is registered.

The Medical Certificate shows that she had suffered one abrasion on her left Brest and one contusion on left leg.

The F.I.R. contains statements of her family members. However, the important statement is of the informant herself. The others had given statements based on the version given by the first informant. The Medical Examination Report shows that the history was given by the informant as under-"while returning from Anganwadi to home around 11:15 AM on 14.08.2021 attempted for sexual assault". The final opinion is not mentioned in the Medical Examination Report.

10. The Photographs are kept in a sealed cover. The informant was confronted with these photographs. She admitted that those photographs shows herself and the Appellant but she denied having taken those photographs. These photographs indicate that there is substance in the submissions of the learned Counsel for the Appellant that it was a consensual relationship. It is not her case that she was forced to give

intimate pose in those photographs. The medical history given to the Doctor mentions that there was an attempt made but there is no firm allegation of commission of rape. All these circumstances raise reasonable doubt about her allegations. At this stage, it would be not proper to comment any further in this matter, because all these questions will have to be decided during trial.

11. The Appellant has made out a case for his release on bail mainly on the basis of the photographs and the history given by the informant to the Doctor. The Appellant is in custody since 21.08.2021. Therefore, he deserves to be released on bail. It is made clear that all these observations are restricted to this order and the trial court shall not be influenced by these observations.

12. Hence the following order-

ORDER

[I] The Appellant is directed to be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.

[II] The Appellant shall not enter the village where the informant is residing with her family.

[III] The Appellant shall report to the concerned Police Station once every fortnight till charges are framed.

[IV] The Appellant shall not try to influence any witnesses and shall not cause harassment to the informant in any way.

[V] Learned Counsel Ms. Jayashri P. Reddy, is appointed to represent Respondent No.2. She shall be paid her professional fees in accordance with law.

[VI] The photograph be kept in a sealed envelope with the record of this Appeal.

13. With these observations, the Appeal stands disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]

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