

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

CRIMINAL APPEAL NO.135 OF 2022

Lakhan @ Vinod s/o. Kumar Kakade,
Age : 31 years, Occ. Agri.,
r/o. Sangvi Dumala, Tq. Shrigonda,
Dist. Ahmednagar

..Appellant

Vs.

1. The State of Maharashtra,
Through Police Station Officer,
Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar

2. Prerana Appasaheb Dhende @ Zende
Age : 25 years, Occ. Education,
r/o. Sangvi Dumala, Tq. Shrigonda,
Dist. Ahmednagar

..Respondents

Mr.R.R.Karpe, Advocate for appellant
Mrs.G.L.Deshpande, APP for respondent no.1
Ms.Sunita G. Sonawane, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : MAY 04, 2022**

ORDER :-

This is an appeal under Section 14-A of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The challenge herein is to the order dated 01.01.2022
below Exh.3 in Special Case No.175 of 2021 passed by learned Addl.

Sessions Judge, Shrigonda, Dist. Ahmednagar, rejecting the appellant's application for bail in connection with Crime No.739 of 2021 registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar, for the offences punishable under Sections 354-A, 323, 324, 506 read with Section 34 of Indian Penal Code and Sections 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned Special Judge rejected the application observing that the appellant has committed the alleged offences while he was on bail in connection with another crime registered at the instance of the very informant. Learned Special Judge also observed the appellant to have committed breach of the conditions of bail granted by High Court. In view of learned Special Judge, the present one is the third such crime committed by the appellant against two women.

4. It is the case of the prosecution that on 27.10.2021, the informant (victim) attended the Court at Shrigonda in connection with a case instituted at her instance against the appellant herein. It is an offence of rape. The informant returned her home by 02.00 p.m. Her mother had been to someone's field to work as a labourer

to earn her living. The informant was proceeding on her scooter to fetch grass for she-goats. When she was passing by *Nalge-Bhoite Vasti Shivar*, a white car (bearing no.1787) was stationary at roadside. Two persons were therein. One of them was the appellant. Both of them alighted from the car. They started beating her up. The appellant snatched her *Dupatta* with a view to outrage her modesty. He manhandled and even beat her up with fists and kicks. He also attempted to forcibly drag the informant in the car with a view to take her away. When she put up resistance, he gave threats to her life. He then left towards Daund in his car. The informant immediately made a call through her cell-phone to Shri.Jadhav, Sub-Divisional Police Officer. He, however, did not respond to the phone call. The informant, therefore, went back to the Sessions Court at Shrigonda and reported the matter. After sometime, she lodged the FIR at Shrigonda Police Station. On due investigation of the crime, charge-sheet has been filed against the appellant.

5. Heard learned counsel appearing for the parties.
6. Learned counsel for the appellant would submit that only with a view to see that the appellant is kept behind the bars, a false

FIR has been registered. A very good relationship between the informant and the appellant has turned sore. The informant has, earlier, filed an FIR alleging the appellant to have committed rape on her with a false promise of marriage. Not less than eight family members, including women, of the appellant are accused in that case. After having remained behind the bars for long, the appellant was granted bail. On the given day, he had attended the Court at Shrigonda. He had, therefore, to pass-by the very road. During his travel towards the Court, at a particular time, the location of his cell-phone ought to have been at a place en-route the Court. According to learned counsel, on due investigation, charge sheet has been filed. It is not known as to when the Charge would be framed and the case would be taken to its logical conclusion. Learned counsel, therefore, prayed for grant of bail.

7. Learned APP and learned counsel representing the respondent (victim) would, on the other hand, submit that the appellant has criminal antecedents. He is facing charge of offence of committing rape of the informant/victim. While granting the appellant bail, the Division Bench of this Court imposed certain conditions. By committing present offence, the appellant has, thus,

committed breach of the conditions of bail. It is submitted that the State has moved an application for cancellation of bail. Said application is pending. The Division Bench of this Court has granted liberty to move in that regard during vacation. The informant/victim has filed her affidavit resisting the present appeal.

8. Considered the submissions advanced. Perused the FIR and related papers of investigation. Also gone through the affidavit filed by the informant.

9. It is true that the appellant is an accused in another Special Case filed against him for the offence of rape. The victim therein is none other than the informant in this case. This Court cannot make any observation regarding merits of that case. Suffice it to say that it appears to be a case of emotional involvement between the two. The appellant is alleged to have raped the informant many a time with a false promise of marriage. It appears that the trial in that case has commenced. Recording of evidence of the victim was over. The Division Bench of this Court granted the appellant bail in that case. Certain conditions were imposed while granting him bail. One of such conditions is that the appellant shall not contact the prosecutrix or her parents or relatives or any

witnesses or any such person through whom he would make an attempt to influence the prosecutrix or the witnesses, directly or indirectly by any mode. He was also directed to stay away from the village and if he commits breach of any of the conditions, it would be a good ground for cancellation of bail.

10. This Court has, first, to ascertain whether the appellant deserves grant of bail in the present case. Admittedly, the relationship between the appellant and the informant is not good. The informant/victim contested the appellant's prayer for bail. In spite of having been represented by an Advocate appointed, this Court gave her audience. She made a scene in the open Court. This Court found it to have been made with a view to see the appeal is dismissed. After having agreed to keep the matter after two days, learned counsel for the respondent-victim urged for adjournment of the matter. Be that as it may.

11. The allegations leveled against the appellant in the FIR have been narrated in paragraph (4) above. Said crime has been investigated and charge sheet is filed. The appellant is behind the bars for little over four months in connection with the said crime. As such, his pre-trial detention is unwarranted. So far as regards

the allegations in the FIR are concerned, it has to be stated that the incident allegedly took place at 02.30 p.m. on a road passing through *Nalge-Bhoite Vasti Shivar*. When this Court put a question to learned APP, whether there is an eye witness to the incident, it has been informed that since it was little past noon, there were no passers-by. This Court is not observing the allegations in the FIR to be untrue. The fact is, however, that except the victim, there is no other witness to the incident.

12. Since the charge sheet has been filed and it is not known when the trial in the case would commence and would be taken to its logical conclusion, this Court finds that the pre-trial detention of the appellant is unwarranted. Stringent conditions can be put up while granting the appellant bail. With these reasons, this Court is not at one with the reasons given by learned Special Judge for rejecting the application for bail. Interference with the impugned order is, therefore, warranted.

13. The appeal is, therefore, allowed in terms of the following order:-

- (i) The impugned order dated 01.01.2022 below Exh.3 in Special Case No.175 of 2021 passed by learned

Addl. Sessions Judge, Shrigonda, Dist. Ahmednagar, is set aside.

(ii) The appellant be released on executing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) and surety bond in the like amount, in Special Case No.175 of 2021, pending before the Court of Addl. Sessions Judge, Shrigonda, which is registered pursuant to Crime No.739 of 2021 registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar, for the offences punishable under Sections 354-A, 323, 324, 506 read with Section 34 of Indian Penal Code and Sections 3(2) (va), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; on the conditions that:-

(a) The appellant shall not enter Ahmednagar District, except for attending the Court matters, until further orders;

(b) The appellant shall mark his presence each month at Yavat Police Station, Tq. Daund, Dist. Pune, twice i.e. on Second and Fourth Sundays, between 12.00 noon and 01.00 pm., until further orders;

(c) The appellant shall not tamper with the prosecution evidence in any manner.

14. Fee of learned counsel for respondent no.2 (appointed) is quantified at Rs.6,000/- (Rupees Six Thousand).

[R.G. AVACHAT, J.]

KBP