

R.M. Amberkar
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 45 OF 2022

Kishor Mahadev Pilankar

.. Appellant

Versus

The State of Maharashtra & Anr.

.. Respondents

-
- Mr. Kuldeep Patil i/by Ms. Saili Naresh Dhuru for the Appellant
 - Ms. P.P. Shinde, APP for the State
 - Mr. Atul B. Sonawane for Respondent No. 2
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CORAM : SMT SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.

Date : April 22, 2022

P.C. [Per Milind N. Jadhav, J.]:

1. This is an Appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 filed by the Appellant for enlargement on bail. The Appellant is arrested on 28.07.2021 in Crime No. 277 of 2020 registered at Haveli Police Station, District-Pune at the instance of Respondent No. 2 herein for offences punishable under Sections 376, 420, 323, 504 r/w 34 of the Indian Penal Code, 1860 (**IPC**) and under Section 3(1)(v), 3(1)(s), 3(1)(w)(ii), 3(2)(va) & 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**Atrocities Act**) and under Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

2. Respondent No. 2 - complainant has lodged a report on

03.11.2020 under Section 155 of the Cr.P.C. to register a non-cognizable offence against the Appellant wherein it is alleged that on 27.10.2020 at around 1.15 p.m., the Appellant along with his father Mahadev, wife Kirti, two sisters Lata and Madhuri and two other persons forcefully entered into Flat No. 103 situated in a building at Jadhavrao Industrial Area, Nanded City, Taluka Haveli, District Pune (**said flat**) when her daughter Ananya (13 years) was present, abused her on the basis of her caste, casted serious aspersions on her conduct and morality and assaulted her in the process. In the said report, the complainant has also alleged that the aforesaid persons behaved in a similar fashion with Vikas Bhima Londhe, neighbour and occupant of Flat No. 102 next door who intervened on hearing the commotion.

3. The brief facts which are relevant for the disposal of the present Appeal are as under:-

3.1. The Complainant in her report has stated that:-

- (i) on 29.02.2020, the complainant along with her two daughters Ananya (13 years) and Shravani (10 years) and son Yadvir (3.5 years) came to reside in the said flat; that she was married to Yellappa Bale and residing in Sadashiv Peth, Pune since 2005, however, after co-habiting for 14 years, due to continuous bickering and being assaulted by her husband, she left his house

and came to reside with her sister Ujwala Bhosale (a vegetable vendor) in Jadhav Nagar area, Vadgaon Budruk, Taluka Haveli; that after staying there for a few days, she shifted to the said flat along with her children; the said flat belonged to the Appellant, she paid an amount of Rs. 20,000/- towards deposit and agreed to pay an amount of Rs. 5,000/- per month as monthly rent;

- (ii) the Appellant and complainant decided to enter into an agreement, but the Appellant did not execute the agreement and from March 2020 onwards the lockdown ensued; she paid monthly rent to the Appellant diligently despite not having executed the agreement and continued to stay in the said flat and started a food mess business from there;
- (iii) after March 2020, she faced difficulty due to the lockdown and her food business suffered closure and she was jobless; at the same time the Appellant started residing alone in the adjacent flat No. 102; the Appellant used to host his close friend Malojirao Patil, ACP and other friends in the said flat for house parties; she told the Appellant that since she was unable to earn her livelihood due to the lockdown, she was ready and

willing to vacate the said flat, but the Appellant prevailed upon her to change her decision and told her that she could continue staying in the said flat and prepare food for him and his friends for which he would compensate her; she accepted the offer of the Appellant but later on found that the Appellant took advantage of her situation of being alone in his flat while cooking food for him and forced him upon her without her consent and started maintaining sexual relations with her; she complained about the conduct of the Appellant to his father Mahadev Gangaram Pilankar but no steps whatsoever were taken by him to correct the Appellant;

- (iv) further the Appellant continued maintaining sexual relations with her on the pretext and promise of transferring the said flat in her name and whenever she resisted, the Appellant would threaten her to vacate the said flat and continued to ravish her;
- (v) thereafter the Appellant promised to register the said flat in her name but demanded money from her and hence, she paid amounts of Rs. 1,00,000/- in April, 2020 in the presence of her sister Ujwala Bhosale, one Hade Tai and Malojirao Patil, Rs. 1,50,0000/- in May

2020 and Rs. 1,00,000/- in June 2020 to the Appellant in cash; she borrowed the aforesaid amounts from her relatives and sister Ujwala Bhosale as a hand loan;

(vi) the Appellant despite receiving the aforestated money did not transfer the said flat and continued to ravish her until August 2020 and when persisted upon started evading her and stopped visiting flat No. 102;

(vii) the Appellant behaved in a similar fashion with Vikas Bhima Londhe by promising him to transfer flat No. 102 and received an amount of Rs. 8,50,000/- from him but did not transfer the flat;

(viii) both i.e. Vikas Bhima Londe and complainant therefore met the Appellant and told him that if he was unable to transfer the flats in their names, he should return back the amounts received by him or else face prosecution under the law;

(ix) that in the above backdrop suddenly on 27.10.2020 at about 1.15 p.m., the incident stated above occurred when the Appellant and his family members barged into the said flat, inflicted casteist abuse and assaulted her, injured her daughter Ananya with threats to vacate the said flat and repeated the same with the neighbour Vikas Bhima Londhe.

4. It is pertinent to note that the said flat is situated in a building developed on a plot belonging to the Pilankar family and the developer is Vishal Kadam. Both the complainant and Vikas Londhe had approached the said Developer to complain about the amounts taken by the Appellant for transfer of the two flats. The statement of the developer has been recorded by the Investigating Officer (IO). He has stated that when the complainant and Vikas Londhe approached him with the above complaint, he asked them to produce and show proof of payment or bank statement or receipts issued in respect of any payment made to the Appellant for purchase of the flats occupied by them and only thereafter he would consider taking up the matter with the Appellant and after making the balance payment help them for transfer of the said flats. At that time, the complainant and Vikas Londhe told and threatened the developer that in the event if the said flats are not transferred in their names, they will be compelled to file a complaint against the Appellant for cheating and misrepresentation and in the case of the complainant also under the provisions of Section 376 IPC. However no proof or receipts were provided by both of them to the developer.

5. We have perused the statement of the developer Mr. Vishal Kadam. It is also significant to note that the market value of the said flat in question is in the region of Rs. 15,00,000/- which has been

informed to us by the counsel across the bar.

6. In the present case, the I.O. has recorded the statements of several parties which is quite unusual. In the report lodged by the complainant, it is not understood as to why the complainant was spearheading and espousing the case of Vikas Bhima Londhe, occupant of flat No. 102. Vikas Bhima Londhe has not filed any report. Hence, there was no reason for the complainant to espouse his case and she should have restricted her complaint only to her case.

7. Statement of Vikas Bhima Londhe is recorded on 03.01.2021. He has stated that while searching for a residence sometime in May 2020, he came across the partly constructed building of the Appellant and met the Appellant who promised to sell a flat to him in the said building on the lower floor; that between June and September 2020, he paid an amount of Rs. 8,50,000/- in installments to the Appellant and insisted on the flat to be given to him upon which the Appellant gave the keys of flat No. 102 to him; that he thereafter persisted with the Appellant to enter into the registered agreement but because of the lockdown, the Appellant delayed executing and registering the agreement. Hence the facts of flat No. 102 are different and have no nexus with Respondent No. 2's case. Vikas B. Londhe has not filed any report against the Appellant.

8. It is pertinent to note that both the aforesaid issues of flat

Nos. 102 and 103 are *prima facie* purely civil and commercial in nature as they relate to the residential flats.

9. Following statements have been recorded of various parties by the I.O. which are placed on record and have been perused by us. The same are relevant to decide the present appeal.

9.1. Statement of Ujwala Bhosale, sister of Respondent No. 2 is recorded wherein she has stated that she lent an amount of Rs. 20,000/- towards deposit of the said flat and another amount of Rs. 1,00,000/- to the Appellant.

9.2. Statement of one Hade Tai states that she paid an amount of Rs. 1,50,000/- to the Appellant on behalf of Ujwala Bhosale and Respondent No. 2.

9.3. In so far as third installment of Rs. 1,00,000/- is concerned, there is no reference in any of the statements as to how that amount was paid to the Appellant.

9.4. Further none of the above persons whose statements have been recorded have furnished any proof as to how, when and where the amounts were paid to the Appellant.

9.5. Statement of four jewellers have been recorded by the I.O. also do not prove the veracity of the statements made by Ujwala Bhosale and Hade Tai in so far as they receiving monies from the said

jewellers by mortgaging their jewellery is concerned. In fact the jewellers' statements do not assist the Respondent No. 2's case in any way to prove that she paid Rs. 3,50,000/- to the Appellant. Apart from bare statements, there is no *prima facie* proof of payment of Rs. 3,50,000/- by the Respondent No. 2 to the Appellant

9.6. It is pertinent to note that complaint has been registered on 03.11.2020 for the first time in respect of the allegation under the Atrocities Act against the Appellant, which *prima facie* appears to be to pressurize the Pilankar family due to the above issue of the said flat.

9.7. The statement of Malojirao Madhavrao Patil, ACP, Vishrambaug Police Station, Pune has been recorded by the I.O. in the present case. In his statement, he has stated that he is a friend of the Appellant and used to visit flat No. 102 and office of the Appellant during the lockdown period; that the Appellant had given flat No. 103 to Respondent No. 2 on rent and Respondent No. 2 was running a food mess from the said flat; that 5-6 months ago, there was some dispute in respect of the said flat and the Appellant and her sister had approached him and he had told them to settle the dispute amicably or file appropriate proceedings in the police station if they were aggrieved; that the Appellant used to drink and beat Respondent No. 2 in the parking lot of the said building and near his office in his presence sometimes and therefore he had also tried to reason with the

Appellant but the Appellant never listened to him; that he also informed Mahadev Pilankar, father of the Appellant that Appellant was harassing and forcibly maintaining sexual relations with Respondent No. 2 and the Appellant never listened and used to drink; that the Appellant had taken money from several people and duped them and that 4-5 days after the date of the incident, the developer Vikas Londhe made a phone call to him and informed him about the incident. Thereafter, Respondent No. 2 also informed him about the incident and he told her to go to Haveli Police Station and register a complaint against the Appellant. He has stated that Respondent No.2 informed him that the Appellant used to browbeat her and forced her to maintain sexual relations with him. He has stated that Respondent No. 2 had in his presence paid an amount of Rs. 2,50,000/- to the Appellant for purchase of the said flat. However, we fail to understand the intervention of this police officer in the present case and the relevance of recording his statement by the I.O. But on reading his statement, it appears that the report has been filed by Respondent No. 2 at his instance.

9.8. It is further pertinent to note that there are two reports which are placed on record of Pankaja Gite which are at page 52 and page 192 of the paper book. Both the complaints of Pankaja Gite are filed one year back. The first complaint is dated 24.11.2020 and the

second complaint is dated 08.12.2021. In the first complaint dated 24.11.2020, Pankaja Gite has supported the case of Respondent No. 2 and stated that Malojirao Patil was the person involved in the entire dealing and had assaulted the Appellant and he was the main person who was involved and instrumental in dealing with various flats in the said building.

9.9. In her second statement, Pankaja Gite has alleged that the Appellant has received Rs. 8,00,000/- in installments from her and her husband for sale of one of the flats occupied by her and her family in the said building; that she had borrowed some amount from her brother-in-law Kishor Yogiraj Gholve and raised the balance amount by mortgaging her ornaments in order to pay the aforesaid amount to the Appellant. She has stated that on repeatedly persisting with the Appellant to execute and register the sale agreement of the flat occupied by her, the Appellant evaded her request, the Appellant threatened her with dire consequences and ravished her and forced her to have sexual relations. Hence, she was compelled to file the second complaint under Section 376, 377, 420, 323 and 506 IPC pursuant to which Crime No. 106/2021 was registered against the Appellant. It is pertinent to note that in this complaint, the charge is also made against Mahadev Pilankar along with the Appellant.

9.10. From the reading of the aforestated statements, it is clear

that a similar *modus operandi* of filing complaints against the Appellant appears to have been exercised by persons who have alleged to have paid some amounts to the Appellant. These persons have been inducted in the flats belonging to the Appellant on rent, however there is no rental agreement or leave and licence agreement produced by any of them or proof of any money paid by them to the Appellant.

10. Learned counsel appearing for the Appellant has informed us that by order dated 24.11.2021, the Appellant has been released on bail by the Trial court in Crime No. 106 of 2021.

11. As seen, when Respondent No. 2 had met the developer, she had threatened that if the said flat was not transferred to her name, she would be compelled to file a complaint against the Appellant, which she has done. In the case of Respondent No. 2's said flat, learned counsel appearing for the Appellant has further informed us that the father of the Appellant has filed a civil suit for recovery of possession of the said flat under Section 6 of the Specific Relief Act, 1963 in the civil court. Respondent No. 2 has not placed on record any material, save and except bare submissions as recorded in her statement so as to show her bonafides that she had indeed paid the money to the Appellant, in order to believe her case. Her sister, a vegetable vendor, has also not given any proof of the money paid by her to the Appellant on her behalf. Similar is the case of Hade Tai.

12. Hence, in view of the aforesaid discussion and findings, we are of the considered opinion that in view of the nature of the dispute between the parties, *inter alia*, pertaining to the said flat being civil in nature, the Appellant deserves to be enlarged on bail subject to certain conditions. The Appellant has made out a case for grant of bail. Hence, we pass the following order:-

ORDER

- (i) Criminal Appeal is allowed;
- (ii) The Appellant / Accused Kishor Mahadev Pilankar in Crime No. 277 of 2020 registered at Haveli Police Station, Pune be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount;
- (iii) The Appellant shall cooperate with the investigating agency and report to the investigating officer as and when called;
- (iv) The Appellant shall not enter into the jurisdiction of Haveli Police Station for six months from the date of his release;
- (v) Criminal Appeal is disposed of accordingly.

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]

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