

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 316 OF 2021

Sandeep Dattatray Nikam ... Appellant

Versus

The State of Maharashtra and Anr. ... Respondents

Mr. Nitesh Mohite i/b Sunil Kamble, for the Appellant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Ms. Pawnee Chaddha, Appointed Advocate, for Respondent No.2.

Mr. Gilor, API, Lonavala Dy. S.P. Reader, present.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 15th JUNE 2022.

P. C. :

. Heard learned counsel for the parties.

2 By this appeal, the appellant seeks his enlargement on bail in connection with C.R. No. 119 of 2019 registered with the Lonavala Rural Police Station, Pune for the alleged offences punishable under Sections 376, 417, 504, 506 r/w 34 of the Indian Penal Code; Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offence Act; Sections 3(1)(r)(w)(i)(ii), 3(2)(v)(va) of

Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act; and Sections 7(1)(d) of the Protection of Civil Rights Act, 1955.

3 Learned counsel for the appellant submits that the appellant is in custody since 5th May, 2019. He further submits that the relationship, if any, between the appellant and the prosecutrix, was consensual in nature. He submits that the appellant is ready to marry the prosecutrix.

4 Learned APP opposes the Appeal filed by the appellant, seeking his enlargement on bail. The Appeal is also opposed to by the learned Counsel for the respondent No.2. She submits that the appellant's family members i.e. the prosecutrix and her mother, have been receiving threats from the respondent No.2's family members. Learned Counsel for respondent No.2 submits that the appellant is now proposing marriage with the prosecutrix, only to secure bail. She submits that the prosecutrix does not want to marry the appellant, who has sexually assaulted her and who has abused her in the name of her caste.

5 Perused the papers, including the statement of the prosecutrix recorded under Section 164 of Cr.P.C. The prosecutrix, at the relevant time was 14 years of age. It appears that the appellant, an originally resident of Solapur, would come to the mess of the respondent No.2 (prosecutrix's mother) for taking his meal, pursuant to which, the prosecutrix and the appellant met and their friendship developed into a love affair. The prosecutrix disclosed to her mother, that the appellant by assuring her marriage, had taken her to a lodge and to their house, where the appellant established physical relations with her. The prosecutrix has disclosed that when she learnt that she was pregnant, the appellant took her to a hospital for performing abortion; and that the appellant refused to marry her and told her that the child was not his. The appellant is also alleged to have threatened and abused the prosecutrix. According to the prosecutrix, when she refused to abort, the appellant told her that she belonged to a lower caste and as such, he could not marry her. It appears that the prosecutrix did not perform abortion and decided to continue with her pregnancy and delivered a child. Today, the child is around three years of age. It appears from the DNA report that the appellant is the father of the said child. It also appears that

the appellant's family members have been threatening the respondent No.2 and the prosecutrix. The proposal for marriage is irrelevant and cannot be considered. From the complaint, lodged by the respondent No.2 (prosecutrix's mother), it is evident, that when she questioned the appellant, about his relationship with her daughter, the appellant denied the said relationship as well as the paternity of the child. The appellant aged 25 years has sexually assaulted the prosecutrix, who was of a tender age i.e. 14 years.

6 It is pertinent to note, that the prosecutrix was aged about 14 years, at the relevant time, and the appellant around 25 years and hence, having regard to the prosecutrix's age, the question of her consent, as contended by the learned Counsel for the appellant, cannot be accepted.

7 Considering the peculiar facts of this case, this is not a fit case to enlarge the appellant on bail. The possibility of the appellant threatening and tampering with the witnesses also cannot be ruled out. Appeal is rejected accordingly.

8 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

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REKHA PRAKASH
PATIL
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Rekha Patil

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