

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.69 OF 2022

Subhash Malsingh Sastya,
Aged about 50 years, Occ. Agriculturist,
R/o Islampur, Tah. Jalgaon (Jamod),
District Buldhana

... Appellant

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer, Police
Station, Jalgaon (Jamod), District.
Buldhana
2. XYZ, the Victim
Occ. Household, Islampur, Tah. Jalgaon
(Jamod), District Buldhana, through her
mother Smt. ABC.

... Respondents

Shri G.G. Mishra, Advocate for the appellant.
Shri V.A. Thakare, A.P.P. for the respondent No.1/State.

CORAM : ANIL S. KILOR, J.

DATED : 08 MARCH, 2022.

ORAL JUDGMENT

1. Heard Shri G.G. Mishra, learned counsel for the appellant and
Shri V.A. Thakare, learned APP for the respondent No.1/State.

2. **ADMIT.**

3. This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order below Exh. No.8, dated 23.09.2021 passed by the learned Additional Sessions Judge, Khamgaon, District Buldhana in Special Case No.82 of 2021, rejecting the application Exh. No.8 for grant of bail under Section 438 of the Code of Criminal Procedure.

4. Shri Mishra, learned counsel for the appellant submits that the Crime No.491 of 2021, dated 18.06.2021 was registered with Police Station Jalgaon (Jamod) for the offences punishable under Sections 376(2)(l)(n), 315, 318 and 201 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989.

5. The appellant is the accused No.2, who is the real brother of the victim. The allegations are that the main accused Devidas Bombatkar had committed rape upon the sister of the appellant who is mentally retarded and on knowing that she was pregnant of seven months, the accused persons including the applicant give medicine to her for abortion and on abortion, the fetus was burnt by the accused persons.

6. It is submitted that as the charge-sheet is already filed and the applicant is in jail since 19.06.2021, he may be released on regular bail.

7. Shri Mishra, learned counsel for the appellant further submits that he is ready to abide any condition, if imposes while granting bail.

8. On the other hand, Shri Thakare, learned APP strongly opposes the appeal and submits that in this matter the victim who is the real sister of the appellant. The mother is the witness, who has given statement under Section 164 of the Code of Criminal Procedure, which corroborates the story of the prosecution.

9. It is submitted that if the appellant is released on bail, because the appellant, victim and the mother of the appellant, they stay in same house, the appellant would pressurize the witnesses and tamper the prosecution evidence.

10. It is further submitted that as Section 201 of the Indian Penal Code attracts in this case, it is the serious offence and accordingly, he submits that the appeal may be dismissed.

11. Though the respondent No.2 was served through concerned Police Station and report dated 04.03.2022 of Sub-Divisional Police Officer has submitted, nobody appeared on behalf of respondent No.2.

12. On perusal of the statements of the victim and the mother of the victim, the involvement of the applicant is clear. As the offence is serious and because the appellant stays with the victim and the mother of

the victim, there is every likelihood that if the appellant is released on bail, he may pressurize the victim and the witnesses, which may prove prejudicial to the prosecution.

13. In that view of the matter, I do not find any merit in the present appeal. Accordingly, I pass the following order:

- i) The appeal is **dismissed**.
- ii) The learned Additional Sessions Judge, Khamgaon, District Buldhana is requested to expedite the trial and conclude the same as early as possible.

The appeal is **disposed of**, accordingly.

[ANIL S. KILOR, J.]

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