

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 404 OF 2021

1. Pramod Devidas Bombatkar,
Aged about 36 years, Occ. Agriculturist
2. Purushottam Ramdas Bombatkar,
Aged about 37 years, Occ. Agriculturist,
3. Kailash Onkar Bombatkar,
Aged about 55 years, Occ. Agriculturist
All R/o Wadoda (Panache), Tq. Muktainagar,
District Jalgaon, Khandesh Buldana.

.... **APPELLANTS.**

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Jalgaon, Jamod, Buldhana.
2. XYZ-Victim/Complainant.
FIR No. 491/21
Police Station, Jalgaon Jamod,
Buldana

.... **RESPONDENTS.**

Shri S.V.Sirpurkar, Advocate for Appellants.
Shri S.D.Sirpurkar, A.P.P. for Respondent No.1/State.

CORAM : ANIL S. KILOR, J.
DATED : 4th MAY, 2022.

ORAL JUDGMENT :

Heard.

2. **ADMIT.**

3. The present appeal is arising out of rejection of pre-arrest bail vide order dated 23rd September, 2021 passed by Additional Sessions Judge, Khamgaon, District Buldana in Special Case No. 82 of 2021 in connection with Crime No. 491 of 2021 registered with Jalgaon Jamod Police Station for the offence punishable under Sections 376(2)(L)(N), 315, 318 read with Section 34 of the Indian Penal Code and Sections 3(1)(2)(i)(ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity), Act, 1989.

4. The allegations against the appellants are that he was present in the meeting wherein a decision was taken that fetus of the victim should be aborted. As far as allegations under Section 376(2)(L)(N) the same are against the accused Devidas. Whereas, the allegation that fetus was later on burnt, in the statement of the victim recorded on 14th June, 2021, she named her brother

Subhash. However, in the said statement the name of the appellants were not mentioned, by the victim. In the said backdrop, learned counsel for the appellant submits that the only role attributed to the appellant is that they were present in the meeting at the time of decision that the fetus of the victim should be aborted.

5. She submits that even if as per statement of victim under section 164 of the Code of Criminal Procedure, at the most Section 201 of Indian Penal Code will apply under which the maximum punishment is seven years.

6. She further submits that as the chargesheet is already filed, the custodial interrogation of the appellant is not necessary.

7. On the other hand, Shri Shirpurkar, learned Additional Public Prosecutor opposes the present appeal and submits that this Court has rejected pre-arrest bail of brother of the victim Subhash and this Court has found sufficient material in this case. Accordingly, he prays for rejection of appeal.

8. I have perused the chargesheet and the contents of the First Information Report.

9. In a statement of victim who is a specially abled person, recorded on 14th June, 2021, she has stated the name of her brother who has disposed of fetus by burning the same. However, subsequently in a statement recorded under Section 164 of the Code of Criminal Procedure, on 9th August, 2021 she has stated the names of all accused persons.

10. In this case, chargesheet is already filed against the accused nos. 1 and 2. They are in jail.

11. Looking to the role attributed to the accused nos. 1 and 2, the case of the appellants cannot be equated with them as the only role attributed to the present appellants is that they were present in the meeting in which the decision was to the effect that the fetus of the victim should be aborted.

12. In view of the fact, I am of the opinion that the custodial interrogation of the appellant is not necessary in this case. Moreover, there is no *prima facie* incriminating material to show the involvement of the appellant in the offence under the Atrocities Act and therefore the bar under Section 18 would not come in the way of the appellant in this case.

13. Thus, in the above referred backdrop, I pass the following order.

ORDER

- i. Criminal appeal is allowed;
- ii. Order dated 23rd September, 2021 passed by Additional Sessions Judge, Khamgaon, Dist. Buldana in Special Case No. 82 of 2021 is hereby quashed and set aside.
- iii. The order granting ad-interim bail dated 28th October, 2021 is hereby confirmed with modification that the appellants shall attend the concerned police station as and when their presence are required.

The Criminal Appeal stands **disposed of** accordingly.

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2022.05.06
10:53:00 +0530

S.K.Nair

JUDGE