

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.383 OF 2023

Raees Hanif Sayyed
Age: 32 years, Occu.: Driver,
R/o. Tura, Tq. Pathri,
Dist. Parbhani.

.. Appellant

Versus

1. The State of Maharashtra,
Through Officer In charge,
Police Station Pathri,
Dist. Parbhani.

2. X.
(Name withheld)

.. Respondents

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Mr. S. J. Salunke, Advocate for the appellant.
Mrs. V. S. Choudhari, APP for respondent No.1 – State.
Mr. Mahendra G. Kochar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 21st June, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to challenge the order of rejection of his application under Section 438 of the Code of Criminal

Procedure i.e. Criminal Bail Application No.166 of 2023 by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Parbhani on 25.04.2023. The appellant has been arrayed as accused in Crime No.63 of 2023 registered with Pathri Police Station, District Parbhani for the offence punishable under Sections 376(2)(n), 354, 341, 323, 506 of the Indian Penal Code and under Sections 3(1)(w)(ii), 3(2)(va) of the Atrocities Act, at the behest of present respondent No.2.

2. Heard learned Advocate Mr. S. J. Salunke for the appellant, learned APP Mrs. V. S. Choudhari for respondent No.1 – State and learned Advocate Mr. Mahendra G. Kochar for respondent No.2.

3. It has been vehemently submitted on behalf of the appellant, after taking us through the FIR lodged by present respondent No.2, that it is very much clear from the said recitals that the present appellant had lodged report against the husband of the informant alleging that he has committed offence punishable under Sections 307, 326, 506 of Indian Penal Code on 05.11.2022. In spite of that the present FIR came to be lodged on 23.02.2023, which is nothing but in retaliation. The incident is alleged to have committed on 18.01.2022 on the first occasion and, thereafter on 04.03.2022, 18.03.2022, but at no point of time, she had disclosed the said fact to her husband, nor lodged report with the police. According to her when around 11.30 p.m. on 18.03.2022 the present appellant had given a

phone call on her mobile and this fact was noted by her husband, then she had disclosed the said fact to her husband. In spite of that also, they had not tried to lodge the FIR. Thereafter, she says that she became pregnant and she was sure that the said pregnancy is not from the sexual intercourse, which she had with her husband. Then she states that she herself and her husband had contacted a doctor and on his advise, she got herself aborted. Therefore, except the bare version, which is as a counter blow to the FIR lodged by the present appellant, there is nothing. It cannot be then said that there is any bar under Section 18 or 18-A of the Atrocities Act. The learned Special Judge ought to have taken all these facts into consideration and ought to have released the appellant on bail. This Court has granted interim protection to the appellant by order dated 03.05.2023 and had imposed conditions. The appellant has abided by the same and corroborated the investigation.

4. Per contra, the learned APP as well as the learned Advocate representing respondent No.2 strongly opposed the application and submitted that unless the evidence is led, it cannot be said that the present FIR is a counter blow to the FIR lodged by the appellant. The delay has been explained in the FIR itself. The appellant is having money power, whereas the informant is poor. Possibility of winning over cannot be ruled out. This is the submission by the learned APP and Learned Advocate for

respondent No.2 submits that by using his money power the accused is giving threats to the informant and insisting that she should withdraw the allegations. Thorough investigation is required and, therefore, the custody of the appellant is necessary.

5. The first and the foremost fact that is required to be considered is that the informant is a major lady. She is having two children. The accused was the driver of the tractor in which sugarcane cut by respondent No.2 and her husband were transported to the sugar factory. The informant and her husband were doing labour work of cutting sugarcane and they used to go with the labour contractor for the said work. Perusal of the FIR would show that there was sexual intercourse between the accused and the informant on several occasions, but at no point of time, she has lodged the report or told the said fact to her husband. It is only after when her husband noted that the accused has given phone call on the mobile of the informant on 18.03.2022. He came to know about the alleged incidents, but still there was no attempt on their part to lodge the FIR. Even after allegedly carrying pregnancy, which the informant says that was from the accused, still she got the pregnancy aborted and the husband appears to be made known to the said fact. Ultimately, she has lodged the report on 23.02.2023. The present appellant has lodged the report against the husband of the informant on 03.11.2022 itself allegedly committing offence

under Section 307, 326, 504 of Indian Penal Code. If that offence was registered on that day against the husband, still how the informant could have kept quiet and in the present FIR she says that she did not lodge the report only on the count that she would be defamed. Thus, there appears to be considerable delay in lodging the FIR. Perusal of the same would show that he was arrested in that case on 10.11.2022. That means from 10.11.2022 to 30.01.2023, he was in jail, still the informant had not taken steps to lodge a report. Therefore, there appears to be some substance in the say of the appellant that the FIR has been lodged with *mala fide* intention. Under the said circumstance, there is no question of bar under Section 18 or 18-A of the Atrocities Act. This fact ought to have been properly considered by the learned Trial Judge. The Court before whom the bail applications are filed are not supposed to go by the Sections, but they should consider overall case and the parameters laid down by the Hon'ble Supreme Court as well as this Court. Mechanical refusal of bail applications amounts to injustice, which should be avoided by the concerned judicial officers.

6. The appellant has cooperated with the investigation. As regards the apprehension to the life expressed by the informant is concerned, it can be seen that appellant is resident of Tura, Tq. Pathri, Dist. Parbhani and respondent No.2 is resident of another village. Still, the condition of not to

visit the village of informant by respondent No.2 can be imposed. With these observations, following order is passed :-

ORDER

- I) The Criminal Appeal stands allowed.
- II) The order passed below Exhibit-01 in Criminal Bail Application Nos.166 of 2023 dated 25.04.2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Parbhani stands set aside. The said application stands allowed.
- III) The interim protection granted by this Court earlier to the appellant vide order dated 03.05.2023 is hereby confirmed and made absolute. In other words, in the event of arrest of the appellant – **Raees Hanif Sayyed** in connection with Crime No.63 of 2023 registered with Pathri Police Station, District Parbhani for the offences punishable under Sections 376(2)(n), 354, 341, 323, 506 of the Indian Penal Code and under Section 3(1)(w)(ii), 3(2)(va) of the Atrocities Act, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each, if not already released.
- IV) The appellant shall not enter the jurisdiction of village Pathargavhan, Tq. Pathri, Dist. Parbhani till the conclusion of trial.

V) The appellant shall not tamper with the evidence of the prosecution in any manner.

VI) He shall not indulge in any criminal activity.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm