

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 477 OF 2023

Jyotilal Pandurang Patil,
Age : 25 years, Occu. : Agriculture,
R/o. : Anturli, Tq. Pachora,
Dist. Jalgaon.

... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through P.I. Police Station Pachora,
Tq. Pachora, Dist. Jalgaon.

2. X.Y.Z.

... Respondents
(Orig. Informant)

...
Mr. Mayur Vasant Salunke, Advocate for Appellant.
Mrs. V. S. Choudhari, APP for Respondent – State.
Mr. Dhanraj S. Ingole, Advocate for Respondent No.2.

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

DATED : 06th JULY, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Here is an appeal under section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “Atrocities Act”) at the instance of present appellant/original accused to challenge the order of rejection of his bail under section 439 of the Code of Criminal Procedure (Cr.P.C.) passed by Additional Sessions Judge, Jalgaon in Sessions Case No. 245 of 2022. The appellant has been arrayed as accused in Crime

No. 419 of 2022, dated 13.09.2022, registered with Pachora Police Station, Dist. Jalgaon for commission of offence under sections 376, 376(2)(L)(N), 451, 506 of the Indian Penal Code (IPC) and sections 3(1)(w)(i)(ii), 3(2)(5V) of the Atrocities Act, 1989.

2. Learned counsel for appellant would submit that it is apparent case of false implication. Taking us through the FIR, it is submitted that, when the alleged offence has been committed has not been spelt out in the report. That, general and omnibus allegations are levelled. FIR was lodged after inordinate delay. Inviting our attention to the FIR, it is submitted that report is also at the instance of a relative of alleged victim. That, allegations are levelled that victim was mentally disabled and taking disadvantage of the same, accused/appellant had raped her. It is pointed out that it is alleged that victim was said to be pregnant and so her DNA samples was gathered and analyzed, but DNA examination has excluded appellant to be father of the said child. It is submitted that, therefore under such circumstances, there was nothing on record to show any forceful sexual intercourse as alleged by prosecution. He pointed out that now investigation is already over and accused is behind the bar since long. There is no further inquiry or recovery to be made from appellant/accused and therefore as no purpose would be served by keeping him

languishing in jail, it is submitted that regular bail application deserves to be allowed as he is ready to abide all and any conditions imposed by this Court.

3. Strongly opposing the above relief, learned APP pointed out that disadvantage of a mentally disturbed victim has been taken. When she was alone, accused used to repeatedly visit the house and sexually abuse her. It is pointed out that informant had herself seen accused indulging in said act and therefore report has been lodged. According to learned APP, there is sufficient evidence against the accused. Offence is serious. As victim is differently abled, she expresses serious apprehension of misuse of liberty for tampering the witnesses and for all above reasons application is sought to be rejected.

4. We have heard both sides to their satisfaction. We have visited the FIR dated 13.09.2022. The sum and substance of the FIR which is at the instance of maternal mother-in-law of victim, that victim is mentally retarded since birth. That, one month back, at midnight, she had heard shouts of the victim and so she went towards the house of the victim and saw her naked and accused sleeping over her.

5. According to informant, mother of victim also is old age and mentally retarded and there being no male member, FIR was not promptly lodged. According to informant, on 25.08.2022, it was revealed that victim was pregnant. On being repeatedly questioned victim disclosed about accused entering in the house, stripping her and sleeping over her after issuing threats. Consequently, finally FIR was lodged.

6. Documents show that blood and bone samples were obtained for DNA profile. DNA analysis has excluded present appellant to be a biological father. However, it is pertinent to note that samples were apparently taken on 27.09.2022 and 29.09.2022, however pregnancy was reported to be 21 weeks old. Therefore, possibility of accused also taking disadvantage cannot be ruled out. Even otherwise mere negative DNA report itself will not be sufficient to absolve appellant, at least at this stage. Informant has herself seen accused sleeping naked over victim. Medical papers placed on record show that victim is not mentally fit and her cognitive faculties are not in order. Therefore, in the light of such accusations of sexual assault on more particularly a mentally deranged victim, coupled with the fact about well founded apprehension of prosecution, we do not consider it a fit case to grant relief even though investigation is over and charge-sheet is filed. Resultantly, we proceed to pass following order :

ORDER

- (i) The criminal appeal is rejected.
- (ii) Fees of the appointed Advocate for respondent no.2 is hereby quantified at Rs.5,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)