

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.689 OF 2023

SWAPNIL S/O RAVINDRA JADHAVAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. N. L. Jadhav, Advocate for the appellant
Mr. V. S. Badakh, APP for the respondent/State
Ms. Pooja Langhe, Advocate for respondent No.2 (appointed)

CORAM : R. M. JOSHI, J.
RESERVED ON : 20/09/2023
PRONOUNCED ON : 25/09/2023

P.C. :-

1. This appeal is against order dated 19th July, 2023 passed in Spl. (Atro.) Case No. 76/2023 below Exhibit 8 rejecting application for bail under Section 439 of Criminal Procedure Code seeking bail in connection with Crime No. 193/2023 registered with Shivajinagar Police Station, Dist. Beed for the offences punishable under Sections 376, 506 of Indian Penal Code (for short 'IPC') and under Sections 3(1)(w), (1)(2), 3(5a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act').

2. It is the case of the informant/victim that she was married at the age of 13 years but her husband died within two years therefrom. She thereafter was driven out of her matrimonial house and since then she started residing with her father. According to the informant on

18/04/2023 her father was throwing tantrums under influence of liquor and hence she left the house in anger and was wandering around bus stand at Beed. She was followed by two drunkards and hence she started going towards Jalna road. At one spot, when she was telling about incident two persons following her to a woman, at that time one unknown person came on motorcycle and he over heard the said conversation. He suggested her not to wander around at the said place and asked her come with him and he would help her. When informant refused for the same, he asked her keep faith in him. She, therefore, went along with on his motorcycle towards Gevrai. Though informant asked his name, he avoided to tell the same. She was taken to agricultural field a portion of which was covered with green colour cloth. He started making sexual advances towards her and then threatened her to kill. Hence, she did not oppose him. She claims that thereafter said person committed rape on her. It is claimed that he threatened her to kill and gave a carpet to her on which act of sexual intercourse was done. He thereafter fled away from the spot. She spent her night by sleeping in a temple at Pendgaon. In the morning priest of the temple woke her up. She narrated the incident to one lady who came there. She was thereafter taken to Sakhi Kendra.

3. Learned counsel for the appellant submits that though it is alleged that the sexual intercourse was done with informant against her will however, according to him the medical evidence does not show any

forcible relationship being established with her. It is submitted that there are inconsistencies in the statements of the informant given in the first information report, under Section 164 of Cr.PC. as well as the history given to the Medical Officer. It is submitted that in the statements of other witnesses also do not corroborate version of the informant. According to him if it is a case of forcible sexual relationship between the parties, the same must reflect so in medical evidence. Without prejudice, according to him at the most it could be called as consensual relationship. It is submitted that since the investigation is over and charge-sheet has been filed and considering the possibility of consensual relationship between the appellant and informant, it is a fit case for grant of bail.

4. Learned APP and learned counsel for the victim opposed the appeal by contending that there is no possibility of consensual relationship between them as at the time of incident the victim was 20 years old whereas accused was aged 31 years. It is submitted that the informant has identified the appellant during the identification parade and hence there is no question of false implication of appellant. It is submitted that the sexual intercourse cannot be said to be consensual as the victim was taken to a lonely place where she could not have resisted to the said relations. It is also feared that if the appellant is released on bail, considering the status of victim to be a deserted lady there is likelihood of appellant pressurizing her.

5. The first information report though indicates that according to the informant the appellant had taken her along with him and subjected her to sexual assault however, the same is not supported by medical evidence on record. The medical papers indicate that the sexual intercourse with the victim cannot be ruled out however, there is no finding recorded about any forcible sexual relationship being established with her as no injuries were found on her person. Apart from this there are inconsistencies in the statement of the informant and statement of the witness. With regard to occurrences it is claimed by the informant that she woke by the priest of the temple and thereafter she came out of the temple and sat and has disclosed ordeal to one lady. Whereas the priest also claims to have been informed about this to him. Similarly, her story about she being wandering on the street is not supported by the statement of the said lady who claims that she was told by her that she is left here by her maternal cousin brother. Thus, initially she did not disclose to this lady about occurrence of the incident of rape committed on her. In the statement under Section 164 of Cr.P.C. it is stated that the appellant had brought food for her, which she ate and thereafter he subjected her to sexual assault. Whereas in the first information report different version has given about the occurrence of incident. At this prima facie stage, there is no reason to discard submissions made on behalf of appellant, that this incident in question might not have occurred in the same manner as claimed by informant victim. Having

regard to these facts and as the investigation into the crime is over with filing of the charge-sheet, the appellant cannot be denied bail. He has no criminal history and not likely to flee from justice.

6. As far as the apprehension of the victim about she is likely to be pressurized by the appellant is concerned, he can be directed to attend concerned police station once in a month for the period of six months. Hence the following order.

ORDER

(i) Appeal is allowed.

(ii) The appellant be released on bail in connection with Crime No. 193/2023, registered with Shivajinagar Police Station, Dist. Beed for the offences punishable under Sections Sections 376, 506 of Indian Penal Code and under Sections 3(1)(w), (1)(2), 3(5a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on furnishing PB and SB of Rs.30,000/- (Rupees Fifteen Thousand only) with one or two sureties in the like amount.

(iii) He shall attend the concerned police station once in a month for period of six months from today.

(iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) Fees of the appointed counsel is quantified Rs. 6000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.

(vii) Bail before Trial Court.

(R. M. JOSHI, J.)

ssp